

# Experiences of the child consumer: Their rights and knowledge

Rights of the Child Consumer Conference

Megan Mitchell, National Children's Commissioner

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## Introduction

Business, whatever the size, and whether directly or indirectly, impacts on the rights of children on a daily basis.

Children interact with business in many ways: including as consumers, family members of employees, young workers and as future employees and business leaders.

As a result, children are both rights-holders and key stakeholders in the activities of business. This in turn makes business a major actor in protecting children and advancing their rights.

This conference is an important opportunity to explore the relationship between business and children, and we have a diverse array of expert speakers here today to discuss some of the complexities of this relationship.

One of my major projects this year has been to focus on the human rights issues that arise from children's interactions with business. This complements the Australian Human Rights Commission's ongoing priority to promote greater ties between business and human rights.

As part of this project I conducted a series of consultations with children and young people on their experiences as consumers, reviewed international literature on this issue, and examined key domestic regulatory issues in relation to children's rights and business.

The findings from these activities are contained in my *Children's Rights Report 2015*<sup>1</sup>, which will be publically released in early December this year.

## Children as rights-holders

My work as National Children's Commissioner is informed by the fundamental rights and freedoms laid out in the United Nations' *Convention on the Rights of the Child*<sup>2</sup>.

There are four general principles which underpin all of the rights contained within the *Convention on the Rights of the Child*.

These are: the right to non-discrimination (article 1), the best interests of the child (article 3), the right to life, survival and development (article 6), and the right of the child to be heard (article 12).

These principles provide a framework to guide any decisions and actions that concern children. In particular, they provide a useful foundation for business to guide their interactions with children and young people.

In the consultations I conducted with children and young people on their rights as consumers, one of the key issues that emerged was the need to balance the rights of all children and young people to be heard and to participate in the market economy against the need to prioritise the best interests and safety of children.

## Right to participate

In my work as National Children's Commissioner, I endeavour to apply a child rights based approach to all my activities.

A child rights based approach involves seeing children as **active agents** with the capacity to make their own decisions. This is in contrast with more protective approaches which view children as passive and in need of assistance.

Children's participation as consumers has been mapped in detail by business across different markets, precisely because they are key players in, and targets for, these markets.

A US report published in 2001 found that children's spending had 'doubled' during each decade of the 1960s, 1970s and 1980s and had 'tripled' in the 1990s<sup>3</sup>.

Children have been identified not only as active individual consumers but as major influencers of parental purchases and as potential future consumers. In particular, children are major consumer of goods and services within the toys, fast food, entertainment and clothes market.

The rise of the internet has had particular implications for the experiences of children and young people as consumers.

The internet has changed what it means to be both a business and also a consumer. The internet now houses the new global shopfront.

In 2012-13, over three-quarters (76%) or three out of four of Australia's 15.4 million internet users bought something online.

The current generation of children and young people is the first generation to grow up having never known life without the internet.

We consider young people today to be "digital natives", or in other words, highly tech-savvy and proficient in using online platforms such as social media.

The Australian Bureau of Statistics reports that 90% of children aged 5 to 14 years accessed the internet in the 12 months to April 2012. This reflects a steady increase from 65% in 2006 and 79% in 2009.<sup>4</sup>

Children's engagement with the online world has been further driven by the availability and use of multiple internet-enabled devices (such as mobile smart phones, iPads, game consoles).

While children use the internet for a variety of purposes such as study; listening to music; playing games and social networking,<sup>5</sup> it is also being used as an information channel to research products and to shop online.<sup>6</sup>

The internet also allows children to shop and make purchases without parental supervision and can be a way for children and young people to assert their individuality and independence from parental influence.

## Right to development

As well as having a right to participate in the purchasing of good and services, the consumption of these goods and services has become increasingly linked to children's development, socialisation and identity formation.

The *Convention on the Rights of the Child's* general principle on the right to development is understood to encapsulate all resources, skills and contributions necessary for the survival and full development of the child.

This has traditionally been understood as the right of children to have access to books, information, leisure and recreation activities, and cultural activities.

Viewed in this light, purchasing goods and services necessary for a child's social and educational advancement can be seen as being intrinsically linked to a child's right to development.

Notably, many of these social and educational products and activities can now be purchased online.

In a 2012 survey of children's participation in cultural and leisure activities, the Australian Bureau of Statistics found that the three main reasons children aged fourteen and under used the internet at home were to:

- access educational activities (90%)
- play online games (65%) and
- listen to music or watch videos and movies (63%)<sup>7</sup>

Making purchases online was not included as a category of this survey, however buying things is often a common component of several of these activities.

Of the children and young people I spoke with during my consultations, 62.5% had purchased something online.<sup>8</sup>

Most of the products purchased online were for leisure or entertainment purposes (e.g. clothing, shoes – 28%. and digital entertainment such as games and apps - 40%).<sup>9</sup>

The focus on leisure and entertainment reflects the importance of access to such products for children and their right to development.

In this context, the argument can be made that engaging with business as consumers has become an inextricable part of children and young people's social development and cultural participation.

However the rights of children to participate in, and develop through, engagement with economic markets must of course be balanced against the need to uphold the best interests and safety of children.

## **Best interests of the child**

A number of issues pertaining to the safety and best interests of children are created by children and young people's everyday commercial interactions.

Many of these issues will be explored further by the speakers and panellists at this conference today.

A particular issue that emerged from my exploration into this issue was the question of the actual capacity of children to genuinely consent to decisions that affect their rights.

The use of 'parental consent' in the online context is a widely understood safeguard of children and their rights, yet research demonstrates that the securing of parental consent 'is rarely strictly enforced by site operators, and can often be easily bypassed by child users'.<sup>10</sup>

This has ramifications for a number of children's rights. First and foremost, the right to privacy.

## ***Right to privacy***

“I get at my email address all these weird messages from all these weird sites...and it’s really disturbing sometimes because they send photos” (Year 10 student)<sup>11</sup>

The *Federal Privacy Act 1988* (Cth) does not set a minimum age at which a child is able to consent to decisions about their privacy and the use of their personal information.

In the absence of a set minimum age, an individual assessment on the ability to consent would need to be made of each child on a case by case basis.

Practically speaking the ability of business to make such an assessment would be difficult to undertake in the context of online commerce.

This poses particular problems in relation to practices of online advertising.

Online advertising can involve the use of tracking software and spyware and embedded advertising that is integral to the online content or product purchased.

These practices raise questions about online privacy and whether this ‘research into children’ (or data mining) is occurring by stealth.

Data mining algorithms search across raw data, identifying trends ‘and constructing generalisations and categories’.<sup>12</sup> This data is then cross-collated with other databases to produce a ‘truly staggering amount of consumer information’.<sup>13</sup>

The use of tracking software and spyware such as cookies on websites used by children and young people can be used to construct very detailed consumer profiles of a demographic group that is otherwise very difficult to gain access to.

It also facilitates the tailoring and strategic placement of advertisements on the screen page while the child is active on the website.

Research suggests that children and young people often lack awareness of privacy policies and how companies track, collect and use their personal information on the internet.

A number of children and young people who were involved in my consultations stated that they avoided making purchases via the internet entirely (and in doing so denying themselves access to the same opportunities as other consumers) because of concerns about the security of their information - things participants said include “too risky!” and “No, just in case they rob my dad of his money”.<sup>14</sup>

Other related online privacy concerns include receiving unsolicited emails; access to private files; loss of anonymity online, unauthorised sharing or disclosure of information and misuse of personal financial details.<sup>15</sup>

One approach to improved privacy regulation suggested in the literature involves an 'explicit and clear campaign of awareness regarding the uses to which data' may be stored and mined, placing the onus of responsibility on those who wish to use personal data.<sup>16</sup>

This knowledge or awareness would give people the opportunity to 'resist or negotiate the uses of their information'.<sup>17</sup>

### ***Right to information***

"You could waste like half of your day just reading the terms and conditions" (Year 6 student)<sup>18</sup>

This is particularly pertinent bearing mind that children and young people have a right to information. Article 12 of the CRC states that children have a right to "seek, receive and impart information and ideas of all kinds, regardless of frontiers"<sup>19</sup>.

An interesting example of this can be seen in the United States, where specific regulatory requirements are placed on children's websites that knowingly gather information from children (under the age of 13 years).<sup>20</sup>

These businesses are required to give notice to parents about data collection activities and obtain verifiable consent from parents prior to collecting any information from children.

Even where parent or guardian consent is sought, the principles of the Convention on the Rights of the Child requires that clear, easy to understand, information be provided to children and young people on what is being consented to, particularly when this impacts on their privacy and other rights.

### ***Contracts***

One final issue that I wish to touch on about the best interests of the child and capacity to consent is the issue of contractual agreements.

Issues arise where children agree to end-use license agreements which are mostly written in inaccessible language and easily bypassed or agreed to.

People under the age of 18 years are generally not bound to contractual obligations due to their presumed 'lack of capacity' to fully understand the obligations they have entered into.

The common law allows for one exception to this general rule. A minor can be bound to a contract if that contract is for goods or services that are considered 'necessary'<sup>21</sup> or - in the case of NSW legislation - 'beneficial'<sup>22</sup> to the minor's way of life.

In cases where a child feels that their rights within a contractual agreement have been breached, Australian consumer law still only largely offers a reactive, court-based solution.

Pursuing such an action in court is costly and time-consuming for most people. The ability of children (even where represented by a parent/guardian) to avail themselves of this option in a practical sense is questionable.

In the absence of preventative and/or child-accessible enforcement options, this could lead to a situation where children disproportionately bear the loss of such transactions/ misconduct.

## **Children's knowledge of their consumer rights**

Having outlined some of the key rights issues that arise in relation to children's engagement with business, I'd now like to share with you some of the information and ideas that came out of my consultations with children and young people.

About half of the children and young people who participated in the consultations on business and children's rights said that they knew they had consumer rights and knowledge of basic options available to them (for example, needing a receipt in order to return an item).<sup>23</sup>

Yet while participants seemed generally more confident and knowledgeable about processes involved in returning purchases to shops, this did not seem to translate to the online consumer context.

When I asked the children and young people if they knew what to do if there was a problem with something they bought online, the majority of participants were often unsure of how to proceed in situations where online refunds and exchanges had been denied.<sup>24</sup>

For example, when exploring a hypothetical scenario where an iPad was purchased online from a Hong Kong based company, and then failed to arrive, many participants were unsure of how to seek redress. One participant suggested that they could "catch a plane to Hong Kong", another said "Get the government and shut the company down".<sup>25</sup>

The picture revealed is of children who have spending power to utilize their skills but who still lack the ability to make more informed choices.

The common idea of the tech-savvy 'cyber-kid' contrasts with the findings from my consultations that suggest children's knowledge of the processes and issues associated with online use might actually be quite superficial and limited, highlighting the need for further inquiry 'into children's actual (as opposed to assumed) cyber-literacy'.

## **How can business assist?**

As well as sharing information about the problems and issues they'd experiences, the children and young people I consulted, also offered suggestions on how business could improve their practices to assist children.

### **Options for redress**

These suggestions predominantly centred on the provision of information on consumer rights. Most participants suggested providing more information to young people, in clearer, 'child-friendly' formats.

According to participants, information needs to be 'clearly explained', companies should try and make terms and conditions, warranties, contracts, policies 'easier to understand' and in particular, business should let children and young people know what their rights are.<sup>26</sup>

What is striking about these suggestions is how closely they mirror the considerations arising out of the guiding principles to be heard and to act in a child's best interests.

The general principle on the right of the child to be heard stresses the importance of providing information on children's rights in child appropriate formats.

Additionally, this principle also emphasises the provision of accessible complaints procedures, including access to remedies or redress.

Implementation of a number of these suggested measures could assist business in ensuring that the rights of children are being upheld within the online consumer context.

## **Conclusion**

Amid fundamental social shifts in how children participate in the economic markets, the challenge is to ensure children emerge as active, empowered and consumer literate participants.

Government, business and civil society organisation all have key roles to play in supporting this process and ensuring the rights of children are upheld.

This conference marks the beginning of an important national conversation considering the concerns of children as contemporary consumers and offers a starting point for government, business and not for profits to work collaboratively to improve the experiences and safeguards for children in the consumer context.



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- <sup>1</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015). At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
- <sup>2</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- <sup>3</sup> Anne Sutherland & Beth Thompson, *Kidfluence* (McGraw-Hill E-book Collection, 2003) 79.
- <sup>4</sup> Australian Bureau of Statistics, *Children's Internet Use, by age, 4901.0 - Children's Participation in Cultural and Leisure Activities, Australia* (2012) Table 1. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4901.0Apr%202012?OpenDocument>.
- <sup>5</sup> Australian Communications & Media Authority, *Newspoll, Like, post, share: Young Australians' experience of social media* (2012) 6-7.
- <sup>6</sup> Elizabeth Thomson and Angus Laing, 'The Net Generation': Children and Young People, the Internet and Online Shopping' (2003) 19 *Journal of Marketing Management*, 499-503.
- <sup>7</sup> Australian Bureau of Statistics, *Children's Internet Use, by age, 4901.0 - Children's Participation in Cultural and Leisure Activities, Australia* (2012). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4901.0Apr%202012?OpenDocument>
- <sup>8</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 76. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
- <sup>9</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 76. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
- <sup>10</sup> Sara Grimes, 'Persistent and emerging questions about the use of end-use license agreements in children's online games and virtual world' (2013) 46(3) *UBC Law Review*, 710.
- <sup>11</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 79. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
- <sup>12</sup> Grace Chung and Sara Grimes, 'Data Mining the Kids: Surveillance and Market research Strategies in Children's Online Games' (2005) 30 *Canadian Journal of Communication*, 533.
- <sup>13</sup> Grace Chung and Sara Grimes, 'Data Mining the Kids: Surveillance and Market research Strategies in Children's Online Games' (2005) 30 *Canadian Journal of Communication*, 533.
- <sup>14</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 76-82. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
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- <sup>16</sup> Grace Chung and Sara Grimes, 'Data Mining the Kids: Surveillance and Market research Strategies in Children's Online Games' (2005) 30 *Canadian Journal of Communication*, 543.
- <sup>17</sup> Grace Chung and Sara Grimes, 'Data Mining the Kids: Surveillance and Market research Strategies in Children's Online Games' (2005) 30 *Canadian Journal of Communication*, 543.
- <sup>18</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 79. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
- <sup>19</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12.
- <sup>20</sup> Grace Chung and Sara Grimes, 'Data Mining the Kids: Surveillance and Market research Strategies in Children's Online Games' (2005) 30 *Canadian Journal of Communication*, 534; See *Children's Online Privacy Protection Act of 1998*, 15 USC §§ 6501-6506 (1998).
- <sup>21</sup> See *Goods Act 1958* (Vic); *Sale of Goods Act 1896* (Qld); *Sale of Goods Act 1895* (SA); *Sale of Goods Act 1896* (Tas); *Sale of Goods Act 1895* (WA); *Sale of Goods Act 1954* (ACT); and *Sale of Goods Act 1972* (WA).
- <sup>22</sup> *Minors (Property and Contracts) Act 1970* (NSW) s 17, 19.
- <sup>23</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 79. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
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- <sup>25</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 80. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).
- <sup>26</sup> Australian Human Rights Commission, *Children's Rights Report 2015* – Report (2015) 81. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_ChildrensRights\\_Report\\_2015\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf).