Committee on the Rights of the Child (crc@ohchr.org)

Concept Note for GC on children’s rights in relation to the digital environment

10 April 2019

Dear Committee,

I write on behalf of the Australian Human Rights Commission (the Commission) in response to the invitation to comment on the Concept Note for the General Comment on children’s rights in relation to the digital environment. The Commission is an ‘A status’ National Human Rights Institution, established and operating in full compliance with the Paris Principles. As National Children’s Commissioner, situated within the Commission, I promote discussion and awareness of the human rights of children in Australia, undertake research or educational programs for promoting these rights, and examine existing and proposed laws to ascertain whether they recognise and protect these rights.

This submission is informed by projects that I have undertaken during my term as National Children’s Commissioner: in particular, my investigation of business and children’s rights and the *Kids’ Rights Survey 2018*, which was co-designed with children. The submission also responds directly to the question posed by the Committee about how discrimination can be addressed to ensure that children’s rights are realised in the digital world.

**Business and children’s rights**

My 2015 investigation of children’s rights in relation to the business sector considered a number of issues relevant to the digital environment. These include forms of digital surveillance (such as cookies) that can be used to construct detailed consumer profiles of children, practices such as data mining (for example, in educational contexts) and a range of privacy concerns that arise in relation to phenomena such as unsolicited emails, the unauthorised sharing or disclosure of information and the misuse of personal financial details. Children are significant users of the internet as consumers, and one theme that emerged from my consultations was that they were increasingly using the internet as a type of ‘market research tool’ to seek information about products they wished to buy. While this might suggest high levels of digital literacy, my study simultaneously showed that only half the participants were aware that they had consumer rights. Consultations also revealed a general tendency to believe that the onus to fix a problem in an online context lay with the consumer.

[[1]](#endnote-2) While children clearly need to be better educated about their consumer rights, businesses operating in the digital environment should also be obliged to provide more information about laws and policies in child-friendly formats.

**Kids’ Rights Survey (2018)**

A total of 22,700 Australian children aged under 18 participated in this survey about rights. Although the survey did not focus on digital technology, it did ask children to identify where they had learned about their rights. A high proportion of respondents indicated that they had learned about their rights online: 4,664 (20.6%). This percentage increased according to age with 26.4% of 12-17 year olds reporting that they had learned about their rights online. The survey also asked respondents if they had a specific message for the United Nations. Many children commented on digital technology. Comments generally related to two themes, including cybersafety and access (in terms of connectivity or affordability). Some of their comments are listed below:

* I think that we should be able to go online and be safer!! (9yrs, male)
* It is great but some people online are harsh (11yrs, male)
* The internet is a bit dodgy, and I think Australia should have a conversation about it. They should get people to shut down strange and dodgy websites, because sometimes they can lead to hacking and that’s not safe. Thank you for reading this, United Nations, I wrote this because I care (10yrs, female)
* Don't always trust the internet (12yrs, female)
* Some people don't get it because internet costs so much and it is too much for some people to afford. So I think you need to work on that. (11yrs, female)
* We want better internet in rural areas (13yrs, female)
* Sometimes the internet does not work at our school. That is very annoying (12yrs, prefers not to reveal gender).

These types of comments suggest digital disadvantage is a critical issue when considering children’s rights in digital environments. According to the Australian Digital Inclusion Index 2018, ‘affordability is the key barrier to greater digital inclusion for single parents. The impact of internet access on single parent family budgets is substantial – it accounts for 2% of their household income compared to the national average of 1.17%’.[[2]](#endnote-3) Geography also contributes to digital inequality, as data points to substantial differences in connectivity and access between rural and urban areas.[[3]](#endnote-4) Aboriginal and Torres Strait Islander children living in rural and remote communities generally have low rates of digital inclusion.[[4]](#endnote-5)

**Children’s rights, privacy and wellbeing**

Privacy is an important element of online safety for children. In 2014, I developed a set of resources designed to prompt children to think about privacy in both real and digital contexts. The resources included a privacy survey and a set of scenarios designed to initiate discussion. The materials set out what the *Convention on the Rights of the Child* states about children’s right to privacy, noting, in some cases, these rights are so important that they should be protected by the law. I then asked children to comment on laws, rules and protocols that would help protect their privacy.

Children, especially younger children, believe privacy is important, and most are certain about what it means in the physical world. However, generally the views of children showed that they were not clear about why and when it was important to protect their own privacy and to respect the privacy of others, what laws exist, and what action could be taken to enhance and safeguard privacy. This points to a much greater need to educate children about what privacy looks like in a contemporary context that incorporates the digital world. Further information about this work is available in the [Children’s Rights Report 2014](https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2014).

Organisations that provide services to children also have a responsibility to ensure that they are protected from harm online. The [National Principles for Child Safe Organisations](https://childsafe.humanrights.gov.au/)[[5]](#endnote-6) guide organisations in how to achieve this. The Safety by Design Principles produced by the Office of the eSafety Commissioner similarly promote children’s safety as a crucial element of the design process for websites and apps.

**Discrimination, harassment and abuse**

Everyone has the right to be respected, safe and free from violence, harassment and bullying. A life free from violence and from cruel, degrading and inhuman treatment is a fundamental human right.[[6]](#endnote-7) Digital environments, particularly those created by social media, have created new arenas for discrimination, harassment and bullying. The Commission is of the view that education is the most effective response to cyber-bullying and online safety for children. Research conducted by the Commission (2012)[[7]](#endnote-8) emphasises that the key driver of behavioural change in children is peer support and educative approaches, rather than legislative prescription. The need to educate children about how to deal with negative online behaviour must be balanced with the recognition that access to digital technology and information supports children’s education and their wellbeing. This is especially important for children with disability, for whom digital technology can assist in providing access to educational resources, as well as the means for cultural and social participation.

Children with disability face particular issues when accessing online content. To overcome these barriers, universal design needs to be a guiding principle for web and app (web application) development. The *Convention on the Rights of Persons with Disabilities* requires States Parties to take measures to ensure the accessibility of “information and communications, including information and communications technologies and systems”[[8]](#endnote-9) and to promote universal design.[[9]](#endnote-10) Websites and apps should adhere to the standards outlined in the W3C Web Content Accessibility Guidelines (WCAG) 2.1[[10]](#endnote-11), which make digital content accessible to a wide range of people with disabilities. Children with disability and their representative organisations should also be consulted and included in the design process, so that developers can gain insight into their needs, perspectives and experiences.[[11]](#endnote-12) Lastly, children with disability should be provided with support to access online content, including assistive technology.

Digital technology can play an equally significant role in the lives of children who identify as belonging to racial, cultural, gender and/or sexual minorities, as well as those who experience depression, anxiety or other mental health issues. The communities that such children form in digital spaces can provide essential points of connection and support. *Growing Up Queer* (2014), a study that investigated the health and wellbeing of gender variant and sexuality diverse young people, reported that the internet acts as an important source of information ‘… about the multiple and fluid possibilities for defining one’s own sex, gender and sexuality’.[[12]](#endnote-13) The study also found that LGBTIQ young people were ‘frequently using new media technologies, such as the internet and social networking sites to digitally “come out”, often before “coming out” offline’.[[13]](#endnote-14) Children’s increasing reliance on the internet for both information and support was also highlighted in my 2014 investigation of suicide and self-harm.[[14]](#endnote-15) Online safety is thus important to both the health and wellbeing of children.

Lastly, the potentially harmful exposure of children to online pornography is a significant issue for consideration in discussions about balancing children’s right to protection with their right to participation in the digital environment. The Commission views education as the most effective way to ensure children’s online safety. This includes education about online safety, critical discussions of pornography as part of age-appropriate education about sex and respectful relationships, and human rights education. A package of educative measures that covers these areas has the potential to empower children and their families, and provide them with the tools to minimise both the exposure to and impact of pornographic online context.[[15]](#endnote-16)

I would be very happy to provide the Committee with further information about any of the projects mentioned in this submission if required. Thank you again for the opportunity to participate in this process.

Yours sincerely,



Megan Mitchell

**National Children’s Commissioner**

1. Australian Human Rights Commission, *Children’s Rights Report 2015* (Report, 2015), 61–94 <<https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015>>. [↑](#endnote-ref-2)
2. Thomas, J, Barraket, J, Wilson, CK, Cook, K, Louie, YM & Holcombe-James, I, Ewing, S, MacDonald, T, *Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2018* (Report, 2018), 23 <<https://digitalinclusionindex.org.au/wp-content/uploads/2018/08/Australian-digital-inclusion-index-2018.pdf>>. [↑](#endnote-ref-3)
3. Thomas, J, Barraket, J, Wilson, CK, Cook, K, Louie, YM & Holcombe-James, I, Ewing, S, MacDonald, T, *Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2018* (Report, 2018), 6 <<https://digitalinclusionindex.org.au/wp-content/uploads/2018/08/Australian-digital-inclusion-index-2018.pdf>>. [↑](#endnote-ref-4)
4. Thomas, J, Barraket, J, Wilson, CK, Cook, K, Louie, YM & Holcombe-James, I, Ewing, S, MacDonald, T, *Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2018* (Report, 2018), 6 <<https://digitalinclusionindex.org.au/wp-content/uploads/2018/08/Australian-digital-inclusion-index-2018.pdf>>. [↑](#endnote-ref-5)
5. National Principles for Child Safe Organisations (2019): <<https://childsafe.humanrights.gov.au/>>. [↑](#endnote-ref-6)
6. See for example, *Universal Declaration of Human Rights* (UNDHR), GA Resolution 217A (III), UN Doc A/810,1948, art 5; *International Covenant on Civil and Political Rights* (ICCPR),1966, art 7;CRC,1989, art 19.*Convention on the Rights of Persons with Disabilities*, 2006, art 16; Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 – Violence Against Women (1992), paras 4, 17, 14; Committee on the Rights of the Child, General Comment no. 13- Article 19: The right of the child to freedom form all forms of violence, UN Doc CRC/C/GC/13 (2011) para 12. At http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\_en\_AUV.doc (viewed 3 February 2014); UDHR,1948, art 7; ICCPR, 1966, arts 7, 26. [↑](#endnote-ref-7)
7. Australian Human Rights Commission, *Cyberbullying and the Bystander* (Report 2012) <<https://www.humanrights.gov.au/our-work/childrens-rights/publications/cyberbullying-and-bystander>>. [↑](#endnote-ref-8)
8. *Convention on the Rights of Persons with Disabilities*, art 9. [↑](#endnote-ref-9)
9. *Convention on the Rights of Persons with Disabilities*, art 4(f). [↑](#endnote-ref-10)
10. W3C Web Accessibility Initiative, *Web Content Accessibility Guidelines (WCAG) 2.1* (5 June, 2018) <<https://www.w3.org/TR/WCAG21/>>. [↑](#endnote-ref-11)
11. Centre for Inclusive Design, Submission No 89 to Australian Human Rights Commission, *Report under article 44, paragraph 1(b), on the Convention on the Rights of the Child*, 30 May, 2018, 6; *Convention on the Rights of Persons with Disabilities*, art 4(3) and 33(3); Committee on the Rights of Persons with Disabilities, General Comment No.7 – Article 4.3 and 33.3: Participation of persons with disabilities in the implementation and monitoring of the Convention. [↑](#endnote-ref-12)
12. Robinson, KH, Bansel, P, Denson, N, Ovenden, G and Davies, C, *Growing Up Queer: Issues Facing Young Australians who are Gender Variant and Sexuality Diverse* (Report, February 2014), 18 <<https://www.glhv.org.au/sites/default/files/Growing_Up_Queer2014.pdf>>. [↑](#endnote-ref-13)
13. Robinson, KH, Bansel, P, Denson, N, Ovenden, G and Davies, C, *Growing Up Queer: Issues Facing Young Australians who are Gender Variant and Sexuality Diverse* (Report, February 2014), 19 <<https://www.glhv.org.au/sites/default/files/Growing_Up_Queer2014.pdf>>. [↑](#endnote-ref-14)
14. Australian Human Rights Commission, *Children’s Rights Report 2014* (Report 2014) <<https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2014>>. [↑](#endnote-ref-15)
15. Australian Human Rights Commission, Submission to the Senate Standing Environment and Communications References Committee, *Inquiry into harm being done to Australian children through access to pornography on the Internet* (April 2016) <https://www.humanrights.gov.au/submissions/inquiry-harm-being-done-australian-children-through-access-pornography-internet>. [↑](#endnote-ref-16)