



Children, young people and privacy

Do the technologically savvy, confident and optimistic members of Generation Y have radically different attitudes to privacy from their Baby Boomer parents and their grandparents?

ALRC President, Professor David Weisbrot, stated that, “During our Inquiry, we used a number of strategies to obtain the views of children and young people—for example, we conducted a series of dedicated youth workshops, and we designed a special ‘Talking Privacy’ website to provide information and allow kids to give us their views directly.

“Not surprisingly, it was clear from our discussions with kids, and supported by all the research, that young people are more likely than older people to disclose personal information about themselves on the internet. They enter online competitions, fill in registration pages to join websites, and post photographs of themselves on blogs and social networking sites, such as MySpace and Facebook. However, they also have a strong desire to exercise control over the access to some of their personal information. For example, they want the information they disclose to doctors and school counsellors to remain confidential.

“While young people clearly understand the technology, and in particular the internet, it was clear that they did not have a good understanding of what happens to their information once it is posted. For example, many thought that deleting the profile, or even a particular item, meant that the information is removed completely from the on-line environment—which often is not the case at all.

Professor Weisbrot stated that “For these reasons, the ALRC recommends that the Privacy Commissioner, industry associations and educational authorities provide children and young people with more information on privacy issues, so that they can better protect their own privacy and respect the privacy of others.”

Decision making by children and young people

The *Privacy Act* is silent on the age at which children and young people can make decisions about the handling of their personal information. Research suggests that decision-making capacity evolves throughout childhood and adolescence, and is dependent on a number of factors, such as the nature of the decision in question and the context in which it is to be made. As a general matter, therefore, the ALRC recommends that agencies and organisations assess the capacity of children and young people to make decisions under the *Privacy Act* on a case-by-case basis.

The ALRC recognises, however, that this may not always be possible. The Commissioner in charge of the Privacy Inquiry, Professor Les McCrimmon, notes that, “It is not always possible to make individual enquiries. For example, the business or agency might be transacting with the young person online. When making an assessment of capacity is not possible, a person 15 years of age and over should be presumed to have the capacity to make decisions about their personal information. This is the age at which a person can obtain a Medicare card without parental permission, so it seems sensible to use that age as the default.”

Photographs or other images of children and young people

To date, privacy laws have not addressed the taking of photographs or other images of children and young people without their consent, or the consent of their parent or guardian.

Professor McCrimmon stated that, “The taking of photographs without consent, particularly of children, is a difficult issue. It raises very serious issues of child protection, freedom of expression and need to safeguard the privacy of children. While blanket bans tend not to work, the introduction of a statutory cause of action for a serious invasion of privacy, as recommended by the ALRC, should provide a significant degree of protection. Of course, the proper focus should be on serious invasions of privacy and highly offensive conduct, not on innocent family snaps by the pool”.

For more information about privacy issues related to children and young people, see Chapters 67–70 of *For Your Information: Australian Privacy Law and Practice* (ALRC 108, 2008).

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The Privacy Report and detailed Briefing Notes on 10 key areas can be found at <www.alrc.gov.au>

Professors Weisbrot and McCrimmon are available for interviews