

The Secretary  
Senate Standing Committee on Environment etc

I note that this submission is a little beyond the relevant date for the closing of submissions but I request that the Committee receive it. I make the submission in my capacity as Patron of Children's Rights International and as a former Chief Justice of the Family Court of Australia with a particular interest in the rights of children.

I have read the submissions of Kids Free 2 B Kids by Ms Julie Gale and in substance agree with them.

I consider that the subject matter of this Inquiry is an important one for the Australian community. There are I think two possibly conflicting areas of public interest involved, one being the right to freedom of speech and expression and the other being the right of children to be protected from exploitation. All freedoms are subject to some limit, which is usually when the exercise of that freedom detrimentally affects others. It is also the case in relation to children that their best interests would normally be regarded as paramount in considering such an issue. The onus therefore should not lie upon those such as Ms Gale to show that the conduct complained of does cause harm to children but rather upon those who engage in the conduct to show that it does not do so.

Unfortunately there are many ways in which children are exploited for commercial gain and the use of advertising is one of the most subtle forms of exploitation. It is subtle because we are so overwhelmed with a constant stream of advertising material that to an extent we tend to lose our critical faculties to the point that we take as normal, behaviour that would previously have been the subject of proper condemnation. Some of the responses to Ms Gale's submission appear to me to reflect this view.

I find it difficult to envisage the public good that can possibly be served by permitting advertising of the type complained of as against the possible harm to children and youth that may be involved. It should I think be remembered that the UN Convention on the Rights of the Child, which Australia has ratified, defines a child as any person under the age of 18. The sort of values which this type of advertising encourages is hardly likely to advance the future welfare and development of children. It should therefore be strictly regulated as self regulation has obviously failed.

The Hon Alastair Nicholson AO, RFD, QC