



Participation Consent Policy

6 September 2018

1. Purpose/Scope

The Participation Consent Policy applies to any activity conducted by the Commissioner for Children and Young People WA (the Commissioner) involving children and young people under the age of 18 years, whether undertaken by the Commissioner's staff or by partner organisations and consultants on behalf of the Commissioner.¹

This policy outlines the requirements for seeking consent for children and young people's participation, as required by the *Participation Policy* (RM: 08/4495) and the *Ethical Research and Consultation with Children and Young People Policy* (RM: 08/7294) and should be applied in conjunction with these policies.

This policy seeks to:

- Promote the well-being of children and young people by giving them control over the consent process and reducing the risk of harm to them.
- Allow children and young people to decide whether or not to participate.
- Make children and young people aware of the implications of their involvement.
- Inform parents/guardians of their child or young person's involvement and the implications of their involvement.
- Recognise and support the role of parents and legal guardians to make decisions in relation to children in their care.

Examples of activities covered by this policy include (but are not limited to):

- Commissioner's meetings with children and young people
- consultations including surveys, focus groups, workshops and summits
- advisory committees and reference groups
- research projects
- CCYP website including story content, polls, on-line forums
- events and competitions
- photographs and media opportunities.

¹ This policy is based on work done in other jurisdictions. We specifically acknowledge work by the NSW Commissioner for Children and Young People and the Office for Children and Youth.

2. Definitions

Consent: To permit, approve or agree.

Children and young people: People under 18 years of age.

Partner organisations and consultants: Any organisations, agencies, consultants or individuals who are seeking the participation of children and young people on behalf of the Commissioner for Children and Young People WA whether that organisation or individual is paid or unpaid.

3. Relevant Legislation/Policy/Position Statement

Commissioner for Children and Young People Act 2006 (WA)

United Nations Convention on the Rights of the Child

NHMRC - National Statement on Ethical Conduct in Human Research, 2007 (2015)

The Commissioner approved a Commitment to Child Safety in 2017 reflecting the work of the office in leading Child Safe Organisation in Western Australia. The commitment statement reflects the principle of the act s1(4)(a):

Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation. Children and young people should be safe, feel safe and be respected wherever they are. The Commissioner for Children and Young People prioritises the safety and wellbeing of children and young people in all work of the office and in our work with other organisations.

4. Process for obtaining consent

Our responsibilities to children and young people:

- Consider the best interests and wellbeing of children and young people in all our work.
- Treat children and young people with respect, understanding that they have the right to express their views and to privacy and confidentiality.
- Support the developing autonomy of children and young people, consistent with their age and maturity.
- Give children and young people the information they need in a language they understand and a format that is appropriate to allow them to understand the purpose of their participation, what it involves, the way their contribution will be used and any risks or consequences of participating.
- Ensure children and young people understand that their involvement is voluntary and that this is also understood by other stakeholders, including, partner agencies, consultants, parents, and people who work with them such as teachers, youth workers and case workers.

Our practice:

Active consent should be obtained from all children and young people and their parents/guardians prior to the commencement of the activity.

Consent arrangements should be tailored specifically to each activity and these should conform to both the Commissioner's and any additional partner organisation's consent requirements. Consent is usually obtained in writing. Alternative forms of consent can be considered on a case by case basis.

Adequate time should be allowed for providing information and obtaining consent as the process can be time consuming. If recruiting participants through an organisation consideration should be given to the timeframe for the organisation to recruit participants and for individual participants to consider their own participation.

New information sheets (or an appropriate alternative) and consent forms should be developed using the relevant templates:

- Template – Consent Form for Visit by the Commissioner (RM: 16/9785)
- Template – Consent Form for Consultation (RM: 08/8426)
- Template - Information for Parents of Children and Young People - Visit by Commissioner or Consultation (RM: 16/9783)
- Template - Information for children and young people - Visit by Commissioner or Consultation (RM: 16/9787).

Approval for the information and consent forms should be obtained from the Director Communication and Engagement and the Director of Policy and Research prior to submission to the Commissioner for final approval prior to commencing the activity.

All consent forms are to be scanned and saved on RM in the folder relevant to the participation activity. Every consent form should be checked to confirm that a valid consent has been obtained from each individual and similarly from their parent or legal guardian.

For photographs and other activities where this is reasonable/possible (eg Spotlight stories) individual consent forms should be related to the appropriate photograph or document.

Special considerations

Children under the age of 5 years

Children under 5 years are not required to sign a consent form however the parental consent form for this age group should be modified to include a statement that the parents have explained what is happening and the child has agreed for this to happen – allowing for parental/guardian discretion as to whether the child is mature enough to understand and assent.

Communication difficulties

Some children and young people and/or their parents/guardians may not be able to provide consent using the written consent forms for reasons including they may speak a language other than English, have a disability which means they are not able to write or communicate verbally or they may not be able to read or write. This may require modifications to the consent forms and processes for obtaining consent from both children and young people and their parents/guardians. These modifications should be made in collaboration with the partner organisations or staff working with the children or young people, for example, teachers.

Examples of modifications include:

- verbal consent when a person is unable to read and write
- a physical gesture when a person cannot read, write, or give verbal consent if that is the usual way the person indicates agreement. See for example, the modifications made to consent procedures for the *Consultation with children and young people with disability* (Project Plan: RM 13/1965; Consent form examples: RM 13/2857, RM 13/5248, RM 13/5533).

- Explanation/translation of information and consent forms by teachers for parents/guardians. See for example CALD consultation (Project Plan: RM: 14/5759[v2])
- The use of interpreting and translating services (as per CCYP Disability Access and Inclusion Plan (DAIP) and for non-English speaking families)

Legal guardian non-contactable

Where consent from a parent or legal guardian is not possible, for example, situations of family breakdown in homeless young people, the requirement for parental/guardian consent may be waived if the benefit of participation to the child or young person outweighs the risk of not obtaining the consent of a parent/guardian. Consideration should be given to:

- The capacity of the young person to provide informed consent.
- The nature of the activity involved in participating including, the topic, the methodology and how the information collected is to be used.
- The weighing of the benefit of participation against any risks of harm to the young person.
- The reasons for the inability of the legal guardian to provide consent.
- Whether there is an independent responsible adult in the young person's life who can support the young person and the Commissioner to consider the benefits and risks to participation. For example, a youth worker, principal or teacher depending on the young person's circumstances.

The decision to do this is to be made by the Commissioner. The decision to waive parental consent is to be fully documented for each participant including the reasons for the inability to obtain consent.

Verbal consent

When written consent is not possible and verbal consent is obtained a modified consent form should be used that:

- Acknowledges that the information regarding the activity and the conditions of consent has been **read** to the person providing consent.
- Records the person's agreement to the conditions of participation.
- Documents the name and signature of the person obtaining consent and the time/date of the provision
- A copy of the consent form should be scanned and saved as usual.

Audio or video recording of participation activities

Where a participation activity is to be recorded using an audio or visual recording device this must be specified in the consent process and agreement obtained to this by the participant and the parent/guardian.

Photographs

Consent should be obtained for the publication or use of any photos whereby children and young people are identifiable in the photograph. They may be deemed unidentifiable if:

- The photo is of a large group taken from a distance and faces are not recognisable.
- The photo is of children and young people but their face (or other identifiable feature) is concealed (e.g. if the photo is taken from behind).

There are groups and individual children for whom it is inappropriate to publish photographs (for example, children and young people in care or in contact with the youth justice system) therefore it is important to consider whether photographs are required.

Consent for use of a photo must include that the photo will be considered for use for a maximum of five years. All photos used by the Commissioner's office must portray children and young people positively.

Naming of the individual child or young person

Information that identifies the individual children and young people will not be published with photograph or contributions. For example, photographs of the Commissioner's meetings with children and young people will name the school but not the individual children; published quotes will take the form '13 year old girl' or similar.

There will be an exception for some specific activities (for example, Spotlight stories) and this will require consent to be obtained for naming in photos and for contributions.

Media

Consent requirements to participate in media activities will vary dependent on the nature of the media activity and any existing media consent of organisations the child is involved with.

- Where the media opportunity involves only a photo of the child in the context of an existing organisation with whom the Commissioner is working (eg school), and the organisation has an existing media consent form for each child participating, no further consent is required.
- If the media photo is to be used by the Commissioner, consent will be required.
- Where the media activity involves the child speaking to a media outlet, a specific consent form that meets the requirements outlined elsewhere in this policy is required.
- Where the media activity involves a photo and the child is participating as an individual and not as part of an organisation, a specific consent form is required.

Dealing with sensitive issues and disclosure

For consultations and research about sensitive issues, more detailed consent procedures and forms should be developed and ethics approval may be required. Refer to *Ethical Research and Consultation with Children and Young People Policy* (RM: 08/7294). This should occur in consultation with Director Policy and Research.

The possibility of a child or young person disclosing abuse or risk of harm to themselves or others should always be considered and response processes developed as per the distress and disclosure protocols (RM 14/10393, RM 15/9817 and RM 15/4274. In the consent process it may be necessary to include:

- a section in the information sheets for both children and young people and parents/guardians about the processes in place for disclosure (see for example, *Consultation with young people in Out of Home Care*, RM 15/9861, RM 15/9856)
- a similar line in the child/young person's consent form to indicate they understand what will happen if a disclosure is made (see for example, *Consultation with young people in Out of Home Care* RM 15/8259)
- and preparing verbal information for the consultation or research activity (see for example, *School and Learning Consultation*, RM 16/6280).

Information provided to children and young people may also need to include more detailed information about the confidentiality of the information provided by the child or young person and how that information is stored.

Online participation

Children and young people may participate online in the work of the Commissioner, for example, through online forums and consultation surveys on the CCYP website. See for example disability consultation RM: 13/1965, and the Aboriginal and Torres Strait Islander consultation RM 14/4086).

Given the following factors, it would be impractical to request the consent of a parent or guardian:

- The nature of online public access is that the validity of the consent cannot be verified.
- CCYP online forums are moderated to exclude potentially harmful contributions.
- Children and young people access many other online forums and peer-to-peer networking sites without parental/guardian consent.

The active consent of the child or young person is required and the passive consent of their parent/guardian is also required for example:

- I have read and understood the information about this survey and wish to take part (Check box)
- Have your parent or carer said it's ok to take part? (Check box)

Information collected through online platforms (such as SurveyMonkey and Survey Gizmo) may be transferred and stored on servers located outside Australia and is therefore not subject to Australian privacy legislation. When using online participation consideration should be given to the type of information collected, particularly with regard to anonymity and personal identifiers and sensitivity.

The information provided about the online forum or survey should be similar to that provided to children and young people in other consultations (confidentiality, use of information, how information will be stored etc). For examples see RM: 14/4086 and 13/3907.

Privacy and confidentiality

Personal information collected from children and young people and their parents/guardians will be kept private and confidential.

- Where possible, information will be collected anonymously. However, confidentiality cannot be assured in group activities.
- Participation consent forms are stored securely on Records Manager and not linked to individual participant data unless specifically required, e.g. consent for Spotlight story.
- Information that identifies the individual children and young people will not be published in reports or presentations.

There are limits to privacy and confidentiality of children and young people who work with the Office. The Commissioner will share information if it must be disclosed for legal or child protection reasons.

Withdrawal of consent

Children and young people are able to withdraw their consent to participate at any time, before, during and depending on the type of contribution (e.g. photographs), after the activity.

This is information that should be provided when seeking the consent of children and young people. Consider including information about the point at which consent for participation can be withdrawn, (for example, a SurveyMonkey survey cannot be retrieved once it has been submitted).

At the commencement of, and during the course of an activity, participants should be appropriately reminded of their rights to withdraw their consent. Children and young people who advise they do not wish to participate either immediately prior to or during the participation activity should be supported to enact their decision without censure or pressure to reconsider.

Children and young people who advise they wish to withdraw consent for their contribution or photograph to be used by CCYP subsequent to the activity should be advised of the action that will be taken to achieve this and advised when this has occurred. It may not be possible to remove photographs if they have been used in printed publications although all steps will be considered in view of the particular circumstances of the request to withdraw.

CCYP staff must advise the Director Policy and Research, Director Communication and Engagement and the Commissioner when this request has been made and take the action required to achieve this to the fullest extent possible. This includes marking contributions and photos as 'not for use' in RM and advising other relevant staff.

Partner organisations and individuals

Partner organisations or consultants who are undertaking work for the Commissioner must comply with the *Participation Policy* and *Participation Consent Policy* and any additional consent requirements from ethics approvals.

CCYP staff should ensure partner organisations and consultants understand their obligations for obtaining consent under these policies and have allowed enough time to complete the process of seeking consent before an activity. This should involve a briefing (face-to-face or online) and ongoing support by the staff member to the responsible organisation or individual.

Originals or copies of each child or young person's and their parent/guardian's consent forms must be provided to CCYP for storing on RM. CCYP staff must check all consent forms to confirm a valid consent has been obtained from each individual and similarly from their parent/guardian.

5. Responsibility/Accountability

All staff who are planning, conducting or attending an activity with children and young people in attendance are responsible for implementing this policy. This includes ensuring partner organisations and consultants follow this policy.

6. Exemptions

There are **no** exemptions to the application of this policy.

7. Related Policies/Documents

1. Participation Policy (RM: 08/4495)
2. Template – Consent Form for Visit by the Commissioner (RM: 16/9785)
3. Template – Consent Form for Consultation (RM: 08/8426)

4. Template - Information for Parents of Children and Young People - Visit by Commissioner or Consultation (RM: 16/9783)
5. Template - Information for children and young people - Visit by Commissioner or Consultation (RM: 16/9787)
6. Internal Website Policy (RM: 09/9742)
7. Internal Complaints Handling Policy (RM: 08/5934)
8. Are you listening? - Complaints Guidelines (RM: 13/4495)
9. Involving Children and Young People - Participation Guidelines (RM: 09/13377)
10. Ethical Research with Children and Young People Policy (RM: 08/7294)
11. Ethics review self-audit tool (RM: 14/6888)
12. External Ethics Review Report (RM: 14/6890)
13. KPI Policy (RM: 09/11900)
14. Template for reporting on consultations with children and young people (RM: 13/782)
15. Template – Consultation PowerPoint for children and young people (RM: 16/9792)
16. Snapshot (information about the Commissioner suitable for adults) (RM: 13/8730)
17. Child Safe Organisations Guidelines WA (RM: 16/3871)
18. Performance Appraisal and Development Systems Policy (RM: 09/1007)
19. Consultation disclosure protocol (RM: 15/4274)
20. Interview distress protocol (RM: 14/10393)
21. Interview disclosure protocol (RM: 15/9817)
22. Project Plan Template (RM: 14/7779)
23. Project Evaluation template (RM: 10/9478)

Additional reading and examples of information sheets, consent forms etc developed for previous CCYP work can be found at *Additional Participation Reading* RM: 14/1413