



Participation Consent Policy

June 2020

1. Integrity

It is non-negotiable that the Commissioner for Children and Young People and CCYP staff act in the interest of the Western Australian community, and especially in the interests of children and young people each and every day through the decisions we make, the policies we enact and adhere to, and by the actions we take. It is our intention that our policies and procedures demonstrate how we act in an honest and transparent manner, which forms a basis for our reasoned decision-making effected without bias utilising fair and objective processes.

2. 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* and the *Ethical Research and Consultation with Children and Young People Policy* 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, summits and interviews
- advisory committees and reference groups
- research projects
- CCYP website including story content, polls, on-line forums

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.

- events and competitions
- photographs and media opportunities.

3. Definitions

Consent: To permit, approve or agree.

Active consent: Participants must perform an action to indicate their willingness to participate in the activity. This can be done by signing a consent form, or by digital methods (eg ticking a box, pressing a button or clicking a link). Such action should be performed after the relevant information has been provided.

Informed passive consent: An individuals' consent is assumed if they do not explicitly object to participation after they have been informed about the activity.

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.

RM: A generic reference to the electronic records management system that is in use by CCYP at the time the activity takes place.

4. 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)

National Principles for Child Safe Organisations

The Commissioner approved a Commitment to Child Safety in 2017 reflecting the work of the office in leading the capacity building of Child Safe Organisations in Western Australia. The commitment statement below reflects the principles set out in section 4 of the *Commissioner for Children and Young People Act 2006*:

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.

The National Principles for Child Safe Organisations were agreed to by the Council of Australian Governments, including the WA Premier, in February 2019. The National Principles recognise the important role of participation of children and young people in keeping them safe in organisational contexts. This is captured in National Principle Two which urges organisations to ensure children and young people are informed about their rights, participate in decisions affecting them and are taken seriously. The Commissioner published updated guidelines for WA organisations on implementing the National Principles, in November 2019.

5. Process for obtaining consent

a. 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.

b. Our practice

Active consent should be obtained from all children and young people prior to the commencement of the activity. Passive consent from participants is not sufficient.

Consent should also be obtained from the parent/guardian of a participant. While active consent procedures are preferred, informed passive consent from the parent/guardian is acceptable for certain consultation projects.

Consent procedures should be tailored specifically to each activity and detailed in the research methodology. Consent procedures should conform to both the Commissioner's and any additional partner organisation's consent requirements. As part of the Commissioner's requirements, children and young people should be given information about *the Commissioner's commitment to working with children and young people* and how they can provide feedback or make complaints about the activity or the Commissioner's staff.

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.

Information sheets (or an appropriate alternative) and consent forms specific to the activity should be developed using the relevant templates:

- Template – Consent Form for Visit by the Commissioner
- Template – Consent Form for Consultation
- Template – Non-Consent Form for Survey – passive consent procedure
- Template – Consent Form for Survey – active consent procedure
- Template - Information for Parents of Children and Young People - Visit by Commissioner or Consultation
- Template - Information for children and young people - Visit by Commissioner or Consultation
- Template – Stock photography consent form

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

All completed consent forms are to be scanned and saved on RM in the folder relevant to the participation activity. Every consent or non-consent form should be checked to confirm a valid consent has been obtained from each individual and similarly from their parent or legal guardian. Where digital consent procedures have been used, these must be documented in the consultation strategy and saved to RM.

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

c. 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 Aboriginal English, 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*
- Explanation/translation of information and consent forms by teachers for parents/guardians. See for example CALD consultation
- 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 active or informed passive 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 active 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.

d. 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.

e. 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 (eg if the photo is taken from behind).

There are groups and individual children for whom it may be inappropriate to publish photographs, due to restrictions or safety considerations relating to identifying them (for example, children and young people in care or in contact with the youth justice system), and therefore it is important to consider whether photographs are required.

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' or similar.

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

f. 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 relevant 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.

g. 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*. 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. 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*)
- 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*)
- a section in the verbal introduction given to participants at the start of the consultation or research activity (see for example, *School and Learning Consultation*).

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.

h. Online participation

Children and young people may participate online in the work of the Commissioner, for example, through electronic surveys delivered through survey platforms or forums on the CCYP website. See for example the School & Learning Consultation, the Speaking Out Survey or DigiMe.

As with any other consultation activity, the active consent of the child or young person is required and the active or informed 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)
- Has your parent or carer said it's ok to take part? (Check box)

However, it is acknowledged that it would be impractical to request the active consent of a parent or guardian for an online activity in some situations. For example:

- 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 are able to access similar online forums and/or peer-to-peer networking sites without parental/guardian consent.

Information collected through online survey platforms (such as Survey Gizmo) may be transferred and stored on servers located outside Australia. Whether Australian privacy laws extend to information held on such servers will depend on the individual circumstances of each case. Therefore, when using online participation consideration should be given to the survey platform used, with preference given to a platform that has physical servers within Australia. If the platform does not have physical servers within Australia, consideration should also 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).

i. 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.
- 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 and this is explained to them in child-friendly terms. The Commissioner has a zero tolerance of child abuse, and any safety concerns or allegations of harm will be treated very seriously and responded to straight away. Staff will contact the right authorities when we are worried about a child's safety and will share concerns and information only with those who need to know and involve children, young people, parents, families and carers appropriately.

j. 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 (eg 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 (eg a SurveyMonkey survey cannot be retrieved once it has been submitted).

Participants should be appropriately reminded of their rights to withdraw their consent at the commencement of and during an activity. Children and young people who advise they do not wish to participate either immediately prior to or during the 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 or the Manager Engagement and Communication who will advise 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.

k. 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.

6. 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.

7. Exemptions

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

8. Related Policies/Documents

1. Participation Policy
2. Template – Consent Form for Visit by the Commissioner
3. Template – Consent Form for Consultation
4. Template - Information for Parents of Children and Young People - Visit by Commissioner or Consultation
5. Template - Information for children and young people - Visit by Commissioner or Consultation
6. Internal Website Policy
7. Internal Complaints Handling Policy
8. Are you listening? - Complaints Guidelines
9. Involving Children and Young People - Participation Guidelines
10. Ethical Research with Children and Young People Policy
11. Ethics review self-audit tool
12. External Ethics Review Report
13. KPI Policy
14. Template for reporting on consultations with children and young people
15. Template – Consultation PowerPoint for children and young people

16. Snapshot (information about the Commissioner suitable for adults)
17. Child Safe Organisations Guidelines WA
18. Performance Appraisal and Development Systems Policy
19. Consultation disclosure protocol
20. Interview distress protocol
21. Interview disclosure protocol
22. Project Plan Template
23. Project Evaluation template
24. Statement of Commitment