

Obtaining and managing student and individual consent – Frequently Asked Questions

<p>What is valid consent?</p>	<p>For consent to be valid it needs to be voluntary, informed, specific and current.</p> <p>Informed consent means that the consenting individual knows how their copyright works will be used, and/or, what, how and to whom and under what conditions, their personal information is to be recorded, used or disclosed before agreeing.</p> <p>For example, in seeking informed consent, the school, regional office or departmental division needs to describe clearly to the individual:</p> <ul style="list-style-type: none"> • what information will be published/disclosed (e.g. what copyright material; what personal information) and • where/to whom that information will be published/disclosed (e.g. identify the publicly accessible website, social media site, newspaper, name of the entity).
<p>Why does the school, regional office or departmental division need the individual's consent to use or disclose personal information?</p>	<p>The recording, use or disclosure of state school students personal information (prospective, current and past) is prohibited, unless for a purpose of the <i>Education (General Provisions) Act 2006</i>, or unless one of the other listed exceptions under s.426 apply.</p> <p>Further, personal information of employees, parents, volunteers and community members held by the department may not be used or disclosed unless one of the exceptions in the <i>Information Privacy Act 2009</i>, permitting the department to use or disclose, applies.</p> <p>Consent by the individual, permitting the department to disclose personal information, is an exception in both Acts.</p> <p>Relying on the individual's consent to disclose personal information is an effective way of ensuring the school and departmental employees meet these statutory obligations.</p>
<p>Why does the school, regional office or departmental division need permission to use copyright works created by students?</p>	<p>Students hold copyright to the original works they create during their education and therefore as owners control how others may use their works.</p> <p>The school, regional office or departmental division relies on the student or if under 18 years, their parent's or carer's consent, in order to reproduce, adapt, communicate and publish the student's copyright works.</p>



<p>What is the State School Consent Form and what activities does it cover?</p>	<p>The State School Consent Form covers the recording, use and disclosure of personal information and use of copyright materials during the day-to-day educational activities (including school intranet and social media), carrying out administrative tasks, and for purposes of conducting assemblies/awards ceremonies/art events/ dramatic and musical performances related to the curriculum and other displays of student work.</p> <p>The State School Consent Form also allows the department or school to reproduce, communicate, adapt and publish the copyright work and personal information for purposes identified in Section 3 of the State School Consent Form subject to any amendments/conditions made by the signatory.</p>
<p>What isn't covered by the State Schools Consent Form?</p>	<p>The State School Consent Form does not provide a blanket permission to disclose personal information to non-DoE entities, so unless the disclosure is authorised or required under the <i>Education (General Provisions) Act 2006</i> or another Act, or clearly authorised under Section 3 of the State School Consent Form, then the school will need to seek further consent from the individual.</p>
<p>What is the Project Consent Form and what activities does it cover?</p>	<p>The Project Consent Form is for stand-alone projects and is designed to only be used by regional offices and departmental divisions.</p> <p>It cannot be used by schools in lieu of the State School Consent Form.</p>
<p>Can I use images on Instagram that were obtained under a previous consent form?</p>	<p>No. Previous version of the State School Consent Form and the Project Consent Form did not specify Instagram.</p>
<p>How often should schools update the individual's consent?</p>	<p>It is up to schools to decide how often they will update the State School Consent Form.</p> <p>If schools choose to gain consent once (e.g. at enrolment) it is advisable that parents/carers are regularly reminded to update the school on any changes to their situation. This will help ensure that the consent is current; and that the information is accurate, up-to-date and reflects the student's (and the parent's or carers) current circumstances, needs and wishes.</p>
<p>Can consent be revoked?</p>	<p>Yes, schools and departmental officers should ensure no further use of the image/s/ information/ materials and if practicable should remove image/s/ information/ materials from websites and social media if consent is revoked.</p>



Can consent be limited?	Yes , the consent given on the State School Consent Form can be limited by notifying the relevant nominated contact officer in writing. Schools, regional offices and departmental divisions must note every limitation and ensure consent is not breached.
Can I alter, shorten or otherwise change the consent forms?	No . Seek advice from Strategic Communication and Engagement if a change to the forms is required.
Does consent cover images of students after they have graduated?	No . Consent provided on the State School Consent Form is only valid for the period of enrolment of the student. The exception is if images of students are used for historical purposes (e.g. school centenary celebrations). In this instance, the Principal as the Director-General's delegate under s.426 (4)(e)(ii) of the <i>Education (General Provisions) Act 2006</i> , may provide consent if the Principal is reasonably satisfied that the intended recording, use or disclosure of the former student's personal information is in the public interest. Care should to be taken to respect cultural sensitivities regarding using images of deceased people.
Does the State School Consent Form cover school photography?	Yes , provided schools inform parents regarding the name of the engaged photography company and pertinent information, including if full names will be provided to the supplier as a requirement for participation. Schools should also outline the process if parents wish to limit or withdraw their consent for school photographs.
What are the consequences of publishing images/copyright materials or using/disclosing/publishing personal information without consent?	If we do not gain consent from parents/carers, individual officers, schools and the department may be unwittingly putting students at risk by allowing the students image to be published. If a departmental officer breaches s.426 of the <i>Education (General Provisions) Act 2006</i> it may constitute a criminal offence with a maximum penalty of 50 penalty units (above \$6,500). A decision to disclose personal information by an officer in breach of s.426 may amount to misconduct as defined in s.187 of the <i>Public Service Act 2008</i> . Additionally, if there is a breach of the information privacy principles under the <i>Information Privacy Act 2009</i> , a person may make a complaint to the Information Commissioner which may be referred to the Queensland Civil and Administrative Tribunal (QCAT) for hearing. QCAT can make orders such as requiring an apology or ordering up to \$100,000 compensation. Individual staff members may be held accountable by the department in respect of a breach of the Information Privacy Principles, by means of discipline under the <i>Public Service Act 2008</i> if the breach amounts to a breach of the Code of Conduct.



Does the State School Consent Form or Project Consent Form cover media outlets or production companies?	<p>If media outlets or production companies wish to film or photograph staff, students and/or use the student's copyright materials they need to provide their own consent form for consideration and signing by the staff member, student and/or their parent/carers.</p> <p>Each media request must be approved by the principal following advice from central office media unit – media@qed.qld.gov.au</p>
What is traditional and online media?	<p>Traditional media refers to television, radio and printed press. Online media refers to news and media content accessible via the Internet.</p>
Can consent forms be used by contractors and/or consultants?	<p>No. The consent forms in the Obtaining and managing student and individual consent procedure are not suitable for use with contractors and/or consultants.</p> <p>Any collection, use or disclosure of personal information, or creation and ownership of copyright materials by contracts and/or consultants must be addressed in the contract for goods and services.</p>
What constitutes 'computer hacking and misuse' as outlined in Section 408E of the <i>Criminal Code Act 1899</i> ?	<ol style="list-style-type: none"> 1. A person who uses a restricted computer* without the consent of the computer's controller** commits an offence. The maximum penalty is imprisonment for 2 years. 2. If the person causes or intends to cause detriment or damage, or gains or intends to gain a benefit, the person commits a crime and is liable to imprisonment for 5 years. 3. If the person causes a detriment or damage or obtains a benefit for any person to the value of more than \$5,000, or intends to commit an indictable offence, the person commits a crime and is liable to imprisonment for 10 years. <p>*restricted computer means a computer for which</p> <ol style="list-style-type: none"> (a) a device, code or a particular sequence of electronic impulses is necessary in order to gain access to or to use the computer; and (b) the controller <ol style="list-style-type: none"> (i) withholds or takes steps to withhold access to the device, or knowledge of the code or of the sequence or of the way of producing the code or the sequence, from other persons; or (ii) restricts access or takes steps to restrict access to the device or knowledge of the code or of the sequence, or to the way of producing the sequence, to a person or a class of person authorised by the controller. <p>**controller means a person who has a right to control the computer's use.</p>



<p>Can an 18 year old student sign their own State School Consent Form?</p>	<p>If a student is over 18 then the school should accept a State School Consent Form signed by the student.</p> <p>The student signing the form must understand how the school or department will use their copyright works, and understand the consequences of any agreed recording, use and disclosure of their personal information.</p> <p>Where an adult student has impaired capacity, the school will need to undertake an assessment as to whether the student fully understands the nature and effect of signing the Consent Form. With respect to capacity, the Office of Information Commissioner provides the following advice:</p> <p><i>“An individual may not be capable of giving agreement. Factors such as age or physical or mental disability may prevent the individual from understanding the general nature and effect of giving or withholding agreement. An agency must be sure that the individual has the necessary capacity to understand what is being asked of them before it can rely on their agreement.”</i></p> <p>Refer to: https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/key-privacy-concepts/key-privacy-concepts-agreement-and-consent</p>
<p>Can a host parent sign the State School Consent Form for an international student?</p>	<p>No.</p> <p>Section 426 (4)(b) of the <i>Education (General Provisions) Act 2006</i> (EGPA) refers to the ‘consent of the person to whom the information relates, or if the person is a child unable to consent with the consent of a parent of the child.’</p> <p>The term ‘parent’ is defined in s.10 of the EGPA as:</p> <ol style="list-style-type: none"> 1. A parent, of a child, is any of the following persons— <ol style="list-style-type: none"> a) the child’s mother; b) the child’s father; c) a person who exercises parental responsibility for the child. 2. A person standing in the place of a parent of a child on a temporary basis is not a parent of the child. <p>Therefore, host parents are not considered parents under the EGPA and cannot sign the State School Consent Form.</p>

