

Submission to the Office of the Australian Information Commissioner

Re: Children's Online Privacy Code

Submitted by: Concerned WA Parent

State: Western Australia

1. Introduction

I am a parent of a child in early childhood education in Western Australia. I am writing to provide feedback on the draft Children's Online Privacy Code, particularly in relation to consent practices involving children's personal information and images in digital environments.

My submission is informed by direct experience with current practices in some non-government school settings, where "bundled consent" models are used for the collection, use, and disclosure of children's images and information.

I have also initiated a community petition to raise awareness of bundled consent practices in school settings, which reflects broader concern among parents and caregivers:

www.change.org/stopbundledconsent

2. The Issue: Bundled and Assumed Consent

In some school contexts, parents are asked to provide a single, broad consent that covers multiple, materially different uses of a child's personal information and images. These uses may include:

- Internal educational and administrative purposes (e.g. classroom platforms, newsletters)
- Public-facing uses (e.g. social media, marketing materials, websites)

While consent is presented as optional, the practical reality is often more complex. Declining consent may result in a child being excluded from certain classroom activities, school communications, or shared experiences that contribute to their sense of inclusion and belonging.

Where declining consent results in exclusion or reduced participation, the choice is not neutral in its consequences. In these circumstances, consent cannot reasonably be considered freely given.

Bundling low-risk internal uses together with higher-risk public digital exposure prevents parents from making proportionate and informed decisions about how their child's information is used, limiting meaningful control.

In addition, consent processes may rely on an "opt-out" model, where consent is assumed if no response is provided. In my experience, the available consent options did not reflect my preferences due to the bundled nature of the consent, leaving no meaningful way to provide partial or conditional agreement. Choosing not to respond would have resulted in consent being assumed.

This further undermines the validity of consent, as it cannot be considered informed, voluntary, or actively given where no option reflects a parent's actual preferences and non-response is interpreted as agreement.

3. Practical Experience of Policy Implementation

In raising these concerns with my child's school and its governing body, I received responses that did not substantively engage with the issues raised.

Instead, I was directed to existing policies and procedures, with an emphasis that these must be accepted as part of the conditions of enrolment. For example, I was advised that "when you join the school you agree to follow school policy and procedures." This did not address the core concern regarding whether consent is genuinely voluntary where declining consent may result in exclusion or disadvantage to the child.

Despite requesting access to the relevant social media and consent policies and procedures, I was not provided with this information and was instead referred to the consent form itself. This limited my ability to understand how my child's personal information and images may be used in practice and to make a fully informed decision.

The school has indicated that the policy has been reviewed; however, it has also confirmed that no changes will be made. This is despite being provided with a detailed supporting document outlining the concerns raised, including reference to relevant standards and evidence-informed considerations relating to consent, privacy, and child wellbeing.

The school's governing body has also indicated support for the current approach.

In circumstances where parents have ethical or safety concerns, and where participation or inclusion may be impacted by a consent decision, this may create a situation in which parents feel compelled to consent to avoid negative consequences for their child. This undermines the voluntariness of consent.

More broadly, this experience suggests that there may be limited avenues for families to seek meaningful review or change where concerns relate to the structure of consent itself. It highlights the importance of clear regulatory guidance to ensure that consent practices involving children's personal information are subject to appropriate standards and oversight.

4. Impact on Children's Rights and Wellbeing

These practices raise significant concerns in relation to children's rights and wellbeing:

- **Right to privacy:** Children's images may be shared in publicly accessible digital environments without genuinely informed and voluntary parental agreement
- **Best interests of the child:** Administrative convenience may be prioritised over the best interests of the child in how personal information is handled
- **Inclusion and participation:** Children may experience exclusion, reduced participation, or a sense of being singled out where consent is withheld
- **Disproportionate impact:** Families with cultural, safety, or privacy considerations may be particularly affected

These factors may place pressure on parents to consent in order to avoid negative consequences for their child.

I am also aware of situations where a parent who initially declined consent later changed their decision due to the impact on their child's social experience. In one instance, a child who was

repeatedly excluded from photos and activities asked their parent to change their consent, as they did not want to be singled out or subject to further teasing from peers.

This example highlights how consent decisions may be influenced by a child's experience of exclusion and a desire to avoid negative social consequences, rather than being freely made. It underscores the importance of ensuring that children are not disadvantaged or made to feel different as a result of parental consent choices.

I also note that the school, along with its governing body, regularly shares images of children on public social media platforms. These images may include identifiable information such as clear facial images, first names, school name, and year level.

The public sharing of this type of information raises additional concerns when considered alongside contemporary child safety guidance. For example, Australian law enforcement agencies, including the Australian Federal Police, have advised caution in sharing images of children online where identifying details are visible, due to potential risks associated with misuse of images and personal information.

Many of the children affected by these practices are too young to independently access or understand social media platforms, yet images of them may be shared publicly online by schools or associated bodies.

This raises important questions about whether the child's best interests are being appropriately considered in decisions to publish identifiable images in publicly accessible digital environments. It also highlights the responsibility of organisations to exercise a high standard of care when handling children's personal information, particularly where children themselves are not in a position to understand or meaningfully influence those decisions.

In this context, the routine public sharing of children's images invites consideration of whether current practices adequately reflect a duty of care to protect children from potential long-term privacy and safety risks associated with digital exposure.

5. Relevance to the Children's Online Privacy Code

The issues described above directly engage key principles underpinning the proposed Code, including:

- Consent that is informed, voluntary, and meaningful
- Data minimisation
- Fair and reasonable handling of children's personal information
- The best interests of the child as a primary consideration
- Providing children and parents with meaningful control over personal information

The Office of the Australian Information Commissioner emphasises that children and parents should have greater control over how personal information is used, including images and digital content. Bundled and assumed consent practices in school settings appear inconsistent with this objective, as they limit meaningful choice and may pressure consent in order to avoid negative consequences for children.

Schools should be held to a high standard of accountability in how they collect, use, and share students' images. This includes ensuring that policies, procedures, and consent processes are transparent, accessible, and enable genuinely informed decision-making by parents and guardians.

6. Recommendations

I respectfully recommend that the Code explicitly address the following:

1. **Granular (Tiered) Consent Requirements**
Separate consent should be required for materially different uses of children's personal information, particularly distinguishing between internal educational use and public or online publication.
2. **No Detriment for Non-Consent**
Children should not be excluded, disadvantaged, or experience reduced participation as a result of a parent or guardian declining consent for non-essential uses.
3. **Data Minimisation and Purpose Limitation**
Personal information should only be collected and used where reasonably necessary for a clearly defined purpose, and not combined across multiple purposes under a single consent mechanism.
4. **Heightened Protections for Images and Public Disclosure**
Public sharing of children's images should require a higher standard of consent due to the increased and ongoing risks associated with digital environments.
5. **Transparency and Accessibility of Policies**
Policies and procedures relating to children's personal information should be clearly accessible and supported by meaningful explanations of how they operate in practice.
6. **Clearer Guidance for Child-Focused Contexts (Including Schools)**
The Code should provide clear expectations applicable to services used in educational settings, particularly where third-party platforms are involved.
7. **Prohibition of Assumed Consent Models**
Consent should require a clear, active opt-in. Non-response or silence should not be interpreted as consent.

7. Conclusion

Bundled and assumed consent practices in school contexts illustrate a broader risk that consent involving children's personal information may not be meaningful, voluntary, or in the best interests of the child.

The Children's Online Privacy Code presents an important opportunity to strengthen protections and promote practices that prioritise children's safety, privacy, and inclusion in digital environments.

Thank you for the opportunity to contribute to this consultation.

Submitted by: Concerned WA Parent