



Helping you with Consent



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Consent Guide

Key privacy concepts - agreement and consent

Overview

The Key Privacy Concepts guidelines explain important words and phrases used in the Information Privacy Act 2009 (Qld) (IP Act). They are intended to assist in the interpretation and application of the privacy principles in the IP Act.

Agreement and consent

The concepts of agreement and consent are not identical, but they are sufficiently similar that they can be explained together for the purposes of applying the IP Act. 'Agreement' will be used in this section but the principles apply equally to consent.

Agreement and consent are central to information privacy, which revolves around ideas of control over, and knowledge about, what is being done with an individual's personal information.

An individual's agreement is not necessarily required to collect, use or disclose personal information. The privacy principles allow agencies to collect, use and disclose without agreement, but only in specific circumstances.

Elements of agreement

There are some essential factors that must be present for agreement to be valid. The individual has the capacity to agree and the agreement is:

- voluntary
- informed
- specific; and
- current.

Whether these factors can be met will depend on the specific circumstances and the nature of the information and the individual.

Capacity

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.

If the individual has an authorised representative who is willing to agree on their behalf, the agency needs to satisfy itself that they have the necessary authority.

Where the personal information is about a child or young individual, they may be able to agree to the use or disclosure of their personal information if they have sufficient maturity. If there is a question as to whether or not the individual has the capacity to make their own decisions, the below checklist should assist.



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Checklist

- What are the privacy principles or complaint mechanisms that are relevant to the information handling conduct?
- Does the person have the capacity to exercise their entitlements under the privacy principles and the privacy law (including the complaints mechanism) in relation to the conduct?
- Has the person been given an opportunity to express their views or opinions about how their personal information is handled?
- Has the person been provided with support that is appropriate to their capabilities and their cultural and linguistic background, to enable them to be involved in a decision about the conduct?
- Has the person previously expressed a view or wish about the conduct of which the agency is aware or could reasonably make itself aware?
- Is there any reason why the person's current wishes or previously expressed wishes cannot be followed?
- Is it possible to seek the views or consent of the person's representative? If so, how was the person's representative identified?
- Have the views or consent of the representative been considered?
- Have all other relevant criteria been assessed and considered before making a final decision about what happens to the person's information?



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Voluntary

In order for the agreement to be valid, it must be freely given. An agency cannot:

- trick someone into agreeing
- require agreement before allowing an individual to exercise a right
- threaten to sanction or penalise the individual if agreement is not given.

In deciding if agreement is freely given, an agency should take into account:

- the extent to which the individual the information is about can influence the way in which an agency handles the information
- the alternatives open to the individual the information is about if they choose not to agree
- any serious financial consequences (judged from what the agency can reasonably infer from the circumstances of the individual the information is about) that could flow from refusing to agree
- any undesirable social consequences, such as embarrassment, if they refuse to agree.
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Informed

In order for agreement to be valid, the agency must give the individual enough information to understand:

- what personal information is to be collected, used or disclosed
- for what purpose or purposes
- who the information is being given to, any person or body they will pass it on to, and what use the recipient(s) will make of the information
- the consequences of agreeing; and
- the consequences of refusing agreement.

Providing incorrect or misleading information to the individual, whether deliberately or inadvertently, may render the agreement invalid.

Specific

Broad, sweeping statements seeking agreement, such as 'I agree to the agency using or disclosing my personal information for any purpose', are to be avoided because they do not give the individual a clear idea of what they are agreeing to. If the purported agreement is too broad then it may not be valid, and the agency may breach the IP Act if it relies on it.

The level of specificity required will depend on the circumstances and the sensitivity of the personal information. Generally, the more sensitive the information, or the more privacy-invasive the proposed use or disclosure, the narrower and more specific the agreement must be. Relevant factors include:

- the nature of the personal information
- the proposed use or disclosure; and
- for disclosure, the identity of the recipient, including any privacy restrictions that apply to it and the recipient's level of accountability.

Additionally, an agency should not seek a broader agreement than is necessary for its purposes. It must have a clear understanding of what it needs to do with the personal information and phrase the agreement accordingly.



Consent for overseas processing of data



Informed Consent

In line with Australian Privacy Principles we wish to include an additional consent form for you to consider.

PsychsAI will send your data to our overseas partner via transcription to blah blah blah (be technical but also plain English) - just outline what goes overseas, and why.