Under 18s and Privacy Consent Guideline

This guideline outlines the university’s approach to securing privacy consent from a person under 18 years of age.

Federal and Victorian privacy laws relies on ‘consent’, which is scrutinised against principles of ‘capacity to consent’, and not principles of ‘legal capacity’ to agree to enter a binding agreement. It is critical not to confuse these two concepts, which are fundamentally different.

Privacy Consent

For a privacy consent to be valid an individual must be capable of giving informed consent. Capacity to provide privacy consent is not determined by age alone. It looks at understanding and intelligence.

Where the personal information concerns a child or young person, for instance, he or she may be able to provide consent, as described in the Privacy and Data Protection Act, independently of a parent or guardian provided he or she has sufficient understanding and intelligence to provide valid consent.

The Federal and Victorian privacy commissioners have each adopted the test in the leading UK case on consent from a person under 18 years, when applying the requirement for a privacy consent. 1

Basically a minor is capable of giving informed consent when he or she achieves sufficient understanding and intelligence to enable him or her to understand fully what is proposed.

The Monash Approach to Privacy Consent

Monash Students aged between 16 and under 18 years

A Monash University student of 16 years and above is considered to have the understanding and intelligence to provide privacy consent based on their admission to undertake a tertiary level course of study.

High School Student aged between 16 and 18 years

Monash University considers a 16 or 17 year old high school student with aspirations or intentions to attend university as likely to have sufficient intelligence and understanding to provide privacy consent, as long as the consent is not particularly onerous or otherwise concerning relative to community attitudes, and there is no additional evidence of intellectual impairment.

Persons under 16 years

Monash University requires that parental endorsement be sought for a privacy consent for a person under 16 years, as the level of understanding is likely to be more variable and a general assumption of understanding and intelligence is less reliable. This approach applies to students enrolled to study a single unit who are under the age of 16.

Specific Circumstances

Internet access

Unlike schools, the University does not apply filters to block adult content. Students aged 16 years or over are expected to have the understanding and intelligence to avoid concerning content.

1 Gillick v West Norfolk and Wisbech Area Health Authority (1986) AC 112.
Consent to be Photographed, etc
Privacy consents, such as consents to be photographed or filmed, or consent to be included on a Monash controlled mailing list, may be given by a person aged 16 years or over without endorsement by a parent. The Consents for the Release of Still or Moving Images for general or social media use are available here.

Legal Agreements
Legal capacity to enter a legally enforceable agreement is not the subject of this guideline. Securing an enforceable agreement from a person under the age of 18 years is based on the Age of Majority Act 1977 (Vic) and section 7 of the Goods Act 1958 (Vic) and the principles of the common law. The law and principles about legal capacity to enter a legally enforceable agreement with a minor do not apply to privacy consent.

For matters that are not a privacy consent but a legal agreement (ie copyright licence and agreements under which any payment is due), Monash requires endorsement by a parent.

For advice regarding legal capacity please refer your query to the Office of General Counsel by email at adm-ogc@monash.edu