

YOUNG PEOPLE AND LEGAL CONSENT

SHEET 2: PARTICIPATION IN YOUTH SERVICES



This fact sheet provides information about issues surrounding young people's right and ability to provide consent under NSW law. It is part of a four sheet package written for youth services and other organisations and applies the legal principles outlined in *Sheet 1: Background to Consent*. Where a term is explored in more detail in *Sheet 1*, it is highlighted, so that workers and organisations can access this sheet at their discretion for the full definition.

YOUNG PEOPLE ENGAGE WITH YOUTH SERVICES VOLUNTARILY

Most youth services are voluntary – young people participate because they choose to. This means that the young person has the final say in what happens. Youth workers are under no obligation to work with an unwilling young person whose parent or service provider wishes them to participate. The youth worker should explain to the young person that they do not have to take part, and are free to leave if they wish.

Parental consent is not usually required

In NSW, youth services do not need parental consent for young people to participate in most activities and services. Unlike programs for younger children, young people engage with youth services in their own right, and in most circumstances a **young person's own informed consent is sufficient**. This extends to activities which the parents may disapprove of, or disagree with, including for religious or cultural reasons. It also includes casework and counselling with young people who are estranged from, or in conflict with, their parents.

Read about young people's increasing capacity to provide consent in *Sheet 1: Background to Consent*.

However, an individual young person who lacks the capacity to consent to a particular activity requires a parent or guardian's consent as well. Services and workers need to be able to identify these situations.

Read more about information that must be provided to establish informed consent in *Sheet 1: Background to Consent*

Providing information to establish consent

In order for young people to **provide informed consent**, they must be given enough information to be able to weigh the risks of participation. This will be different for each instance, but could include:

- the activities that will take place (eg. basketball or counselling)
- the times and places
- the level of supervision
- costs and expenses
- what is expected of them
- the expected benefits of participation
- the risks of participation
- how personal information (including photos and videos) will be handled and used.

Level of consent required

The level of consent required (implied, verbal or written) will depend upon the activity, and the risks it entails for the young person and the service.

CONSENTING TO PARTICULAR YOUTH SERVICE ACTIVITIES

Casework

A young person can provide consent themselves when they have the capacity to understand fully what is involved. The youth service will need to establish informed consent to engage in casework and for some steps along the way. For example, the service may need consent before it can share or disclose personal information about the young person to someone else outside the youth service.

This consent to disclose personal information should be specific rather than general. It should specify:

- the information which might be disclosed
- the agencies or individuals it may be disclosed to, and
- the purposes for which it might be disclosed.

Generally, a young person who has the capacity to consent to engage in casework also has the capacity to consent to, or refuse, disclosure of their personal information. This extends to disclosure to the young person's parent or guardian.

Excursions and camps

Informed consent for excursions and camps requires a two-way flow of accurate information:

- The service needs to be specific about activities and their risks, about safety arrangements, transport arrangements, supervision, and what happens if the young person leaves the group.
- The person consenting needs to provide any necessary information about health, physical conditions and abilities, and medications.

For overnight trips, while parental consent itself is not legally required for all young people, often practicalities mean that youth services should still communicate with the parents and guardians of young people involved. For example, if a young person will be travelling outside their usual routines, particularly overnight, parents may worry, call the police, or lodge a complaint about the service. This also extends to parents understanding the circumstances under which a young person can leave the camp or activity, in line with the service's duty of care responsibilities.

INFORMED CONSENT AND PARTICULAR CLIENT GROUPS

The principle of capacity to provide informed consent applies to all groups of young people, regardless of their circumstance – if they have the capacity to provide their own consent, this will always be sufficient. However, there are some groups where, if the consent of a parent/guardian is required, other considerations may be necessary.

Young people in state care

If the young person lacks the capacity to provide informed consent (e.g. due to disability or some other factor), the permission of their legal guardian is required.

Young people who are living independently

If a young person who is living independently of legal guardians (e.g. is homeless or in supported accommodation) lacks that capacity for informed consent, consent can be sought from someone they consider a guardian. This could be an adult who is looking after them, such as a relative or a refuge worker, without the status of a legal guardian. However, for very high-risk activities, the youth service should get legal advice before including a young person who lacks capacity to consent.

Young people with disabilities

Most people with disabilities still have capacity to consent. For those people aged 16 and over whose disability means that they cannot make decisions for themselves, a legal guardian is sometimes appointed.

Regardless of the young person's particular disability and their guardianship status, in low-risk situations the implied or verbal consent of the young person is adequate.

In medium-to-high risk situations, youth services should attempt to gain informed consent from the young person themselves. If the service is not satisfied that the young person

has an adequate understanding of the proposed activity and the implications of their decision, then:

- **For a young person with an appointed legal guardian:** Seek consent from their legal guardian.
- **For a young person (of any age) without an appointed guardian:** Seek consent from the young person's parent, for under-18s. Otherwise, talk to any family, carers or professionals involved with the young person. For very high-risk activities, the youth service should get legal advice before including a young person in the absence of a valid consent from the young person, a parent or a guardian.

Younger children

Sometimes a younger child will attend a youth service, either because the service caters for younger children, or because they are with an older sibling.

The same legal principle applies with younger children and consent. A child can provide informed consent to things that they fully understand. This means that (purely from a consent point of view) it is acceptable for younger children to participate in appropriate activities. However, a service will also have to consider if their duty of care to a child is higher than with young people, and take greater care of children.

Both duty of care and consent are reasons why youth services should have policies on younger children participating in activities and services.

EXAMPLES OF CONSENT IN CONTEXT

Example 1: 'Drop-in' at a recreation centre

A youth service provides drop-in recreational and social activities after school:

- Young people can provide informed consent to this activity themselves. Formal written consent is not necessary. Implied consent is sufficient.

- Any promotional material aimed at parents should make it clear that young people are free to leave at any time with no questions asked.
- It can also be useful to think about how you communicate to young people (even those just attending social activities) the purpose of you providing activities, in order to be clear and transparent.

Read more about types of consent – implied, verbal and written, in Sheet 1: Background to Consent.

Example 2: Counselling

A youth service provides counselling for survivors of child sexual abuse:

- Most teenagers and some younger children have capacity to consent themselves.
- Prior to consenting, the service must provide all relevant information such as:
 - That participation is voluntary (regardless of the young person being referred by a parent, a school counsellor or anyone else)
 - How the counselling sessions will work
 - How emotionally difficult the experience might be
 - Confidentiality and its limits
 - Any other risks, along with any risks of not engaging in counselling.
- The service needs to assess whether the young person has understood fully all of this information and has weighed up the pros and cons.

This series of fact sheets was a collaboration between Youth Action and Shopfront Youth Legal Centre, and were written by Nick Manning. All legal advice contained herein was accurate at the time of writing in January 2018.