

YOUNG PEOPLE AND LEGAL CONSENT

SHEET 3: UNDER-18S' PARTICIPATION IN RESEARCH



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.

INVOLVING YOUNG PEOPLE IN RESEARCH

There are many instances when young people under 18 should be involved in research, or asked their opinion in a structured way. This includes instances where the results affect them in some way, or where their input may produce some beneficial outcome – either for them or some other group.

Parental consent is not required to participate in research

There is a common misunderstanding that parental consent must be obtained before any young person under 18 can participate in research. This is not true. In Australian law, parental rights exist only to safeguard the best interests of their child. The authority of parents to make decisions for their child is not absolute, but diminishes with the child's evolving maturity.

A young person of any age can give their **own informed consent** to participate in research, without their parents' knowledge or consent, as long as the young person is able to give informed consent, which means they understand fully what is involved before consenting.

If a particular young person lacks the understanding or capacity to give informed consent, a parent or guardian's consent is required as well.

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

Providing information to establish consent in research

Informed consent is a voluntary decision to participate based on an adequate understanding of the proposed research and the implications of this decision.

That understanding will include all relevant facts to young people's participation in the research, including:

1. The fact that participation is voluntary and the person can withdraw at any time
2. The process of the research (eg. interview / focus group etc)
3. The subject matter of the research, and how it will be used
4. Confidentiality
5. Any risks that participation poses, e.g. if the research process may trigger difficult emotions, or where there are limitations to confidentiality.

This information should also be presented in a form that young people can easily understand. For example, if researching with groups with low literacy levels, consider using easy-to-understand pictures or symbols, or translators where appropriate.

Level of consent required

The **level of consent required** (implied, verbal or written) will depend upon the research, the legal needs of the researchers, and the risks it entails for the young people involved.

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

THE ETHICS OF BARRIERS TO YOUNG PEOPLE'S INVOLVEMENT IN RESEARCH

Requiring parental consent where legally unnecessary constructs a barrier to young people providing their thoughts or opinions into processes that affect them. Some parents may decline, and some young people won't even ask, assuming that their parents will refuse.

Depending on the research topic, these concerns may particularly affect young people of specific ethnicities, religions, abilities or ages, or one sex more than the other. This is not only potentially discriminatory, but risks distortion of the research findings.

Research – whether in the public sector, the community sector or academia – is not a private undertaking. It serves public purposes and is usually funded by public money. Research results can affect what services are delivered, how services are delivered, and who they are delivered to. If those results are distorted by an unnecessary consent requirement, then that public purpose is perverted. Ultimately this is undemocratic, and inconsistent with the United Nations Convention on the Rights of the Child.

Academic research and consent

Academic research must comply with university ethics rules. Some universities adopt the ethics rules of the National Health and Medical Research Council (NHMRC).

Those rules allow for young people to consent without their parents if the young person *'is mature enough to understand and consent, and not vulnerable through immaturity in ways that would warrant additional consent from a parent or guardian.'*

EXAMPLES OF CONSENT IN CONTEXT

Example 1: Research about a youth service

A youth service is conducting a survey among its clients to gauge satisfaction and gather suggestions for improving the activities and services provided:

- This kind of research directly aims to improve quality of services or amenity to young people, and has low risk associated provided that the research process and data are handled safely.
- Formal written consent is not necessary. Each young person can give their consent verbally, or consent can be implied by the act of filling in an anonymous survey sheet or online form.
- Confidentiality should be considered to encourage users to give critical feedback.

Example 2: Research about youth attitudes or issues

A council, charity or academic researcher is conducting a major survey to determine the needs and attitudes of young people across the region or state:

- This kind of research directly aims to improve quality of services or amenity to young people, and has low risk associated provided that the research process and data are handled safely.
- Neither formal written nor parental consent are necessary. Each young person (as long as they have been provided relevant information about the research) can give their consent verbally, or consent can be implied by the act of being interviewed, or completing a survey.
- The survey should target a specified age range, and the questions and design of the consultation should be appropriate to that age range.

Example 3: Research about mental health

A university researcher is conducting interviews with young people about their mental health:

- The content of the research is sensitive and requires clear consent and confidentiality, along with support in case it triggers any difficulties for individual young people. One way to manage this is with the use of trusted youth workers, teachers or other service providers as 'gatekeepers' or advocates for participants.
- Extra steps should be taken to ensure the understanding of participants, and their acknowledgement of:
 - The voluntary nature of the research
 - Their ability to withdraw or stop the research at any time
 - The type and availability of support.
- Provided that any mental health conditions do not interfere with the participant's capacity to consent, no parental consent is required.

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.