



Information sheet 7a

Assessing a child's ability to consent to sexual activity

This information sheet provides guidelines on how to assess a child's situation and ability to make well-informed decisions regarding sexual activity. There is no simple way to determine the competence of anyone under 18 years of age to make effective decisions and give informed consent to sexual activity, and each child needs to be assessed on a case-by-case basis. There is no specific legislation covering a child's capacity to give consent to sexual activity and health professionals are referred to the [Gillick Competent](#) principles for assessing competence to consent.

To determine if a child is capable of giving consent, health professionals need to assess if the child has sufficient intellectual capacity, emotional maturity and ability to understand the nature and consequences of their sexual activity. [Information Sheet 7: The Mature Minor, Consensual Sex and Child Sexual Abuse](#); and [Working with Youth: a legal resource for community based health workers](#) sections 4 and 9 and the [Guidelines for Protecting Children 2015](#) provide further information.

Health professionals have a responsibility to assess that the child understands the implications of their actions and their ability to provide consent to sexual activity. Children may state they have consented to sexual activity however, their ability to understand the consequences of sexual activity can often depend on their life circumstances and history. A child's statement of consent can be insufficient to determine that the child is not at risk and in some cases a child's consent to certain behaviours and actions can place them at actual risk. Health professionals must consider their duty of care to the child, their reporting obligations under mandatory reporting of child sexual abuse if they are a doctor, nurse or midwife, and the need to report child abuse and neglect.

Factors to consider in assessing if sex is consensual

- the age of the child and the age difference between themselves and the sexual partner(s)
- any perceived or actual power differential between the child and the other person
- the maturity of the child and their views on their sexual activity
- the circumstances that have led to the child's behaviour and situation
- the child's capacity to understand the short term and possible longer term risks and consequences of their actions
- whether or not the child has any condition that impairs their cognitive capacity, irrespective of the cause or duration of that condition (e.g. intellectual disability, under the influence of a substance, history of child abuse or neglect)
- whether or not the child has previously been the subject of exploitation, bribery, coercion, threat or violence in this or another situation.

Identification of a child's competency to consent

Puberty has a profound effect on a child's ability to make consistently mature decisions ¹. Therefore, to identify if a child comprehends consent and the possible consequences of their actions, confirmation is required of the child's understanding and ability to:

- be fully aware of their situation and avoid acting on impulse
- consider the long term risks of sexual activity
- cope with a possible outcome, such as pregnancy
- have input into decisions being made
- avoid circumstances that may cause them harm or neglect, or increase their vulnerability.

Hypothetical Case Study: A girl 13 years requests access to contraceptive pill

A sexually active 13-year-old girl consults with you about access to the oral contraceptive pill. What steps should you take to ensure you meet any legal and ethical obligations to this girl, as well as your own legal obligation under mandatory reporting of child sexual abuse legislation?

Conduct a psycho/social (headss) assessment that includes background information on her sexual activity and relationships. Note the age of the girl and her partner, if her partner is in a position of care or supervision, if the girl is cognitively or mentally impaired, or whether or not she is capable of understanding the nature and consequences of her actions. Discuss confidentiality and your requirement to share information in certain circumstances, preferably with her knowledge and consent. If you assess the child as capable of informed consent:

- document the assessment and factors in determining the girl's competence
- discuss safe sex and self-care, and the law in relation to underage sex
- encourage her to discuss this with her parents or carer, and aid her with strategies to do this
- arrange another appointment to monitor, review, assess future risk and the appropriate reporting required.

In the course of the conversation the girl reveals she lives with her 16-year-old boyfriend, at his mother's house, and she met him the day her mother kicked her out of home.

Refer to the sections above. Follow through with information on safe sex and self-care, while establishing whether or not her consent to sexual activity may be compromised due to her vulnerable situation and a potential lack of other options to have her basic needs met. Determine if she is giving clear and unconditional consent to sexual activity and has considered:

- the risks of obtaining a sexually transmitted infection and/or becoming pregnant, and the subsequent poorer birth/life outcomes for herself and the baby
- her present and future living circumstances including a home, financial or food requirements
- her capacity to function if she is abandoned or needs to flee an intimidating situation.

If you assess:

- there is or has been sexual abuse, and you are a mandatory reporter then you are required to make a [mandatory report of child sexual abuse](#). Non mandatory reporters report child sexual abuse to the local District Office of the [Department for Child Protection and Family Support](#).
- the child has been the subject of exploitation, coercion, parental abandonment, or other forms of abuse or neglect then a report should be made to the local District Office of the Department for Child Protection and Family Support.

Further information and advice can be sought from the Department for Child Protection and Family Support, Princess Margaret Hospital Child Protection Unit, or the WA Health Statewide Protection of Children Coordination (SPOCC) Unit.

Whenever a health professional has clear concerns of physical, emotional, sexual abuse and/or neglect happening to the child they are seeing, or any other child in the family, they have a responsibility to take action to ensure that protective measures are put in place.

Refer to *Guidelines for Protecting Children 2015* for further information.

¹ Cauffman E and Steinberg L, '(Im)maturity of Judgement in Adolescence: Why Adolescence May Be Less Culpable Than Adults', Behavioural Sciences and the Law, Behav. Sci. Law 18, pp. 741-760 (2000).