

## *Working with child clients: consent, confidentiality and child centred practices*

### Consent and Working with Children

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#### **Up to what age do I need to attain parental consent when working with young clients?**

There is no federal, state or territory law that establishes a uniform age whereby social workers must obtain parental consent to work with children. In the absence of such legislation, social workers are required to make a professional judgment on the level of understanding and maturity of the child involved.

The [AASW Code of Ethics \(2010\)](#) section 5.2.3 Informed Consent discusses the need for social workers to assess the 'maturity and level of understanding' of child clients in relation to gaining informed consent. Accordingly, social workers providing social work services to children and young people should:

- Identify any relevant legislative requirements in relation to informed consent (see 5.2.3 d)
- Assess the ability of a child or young person to give informed consent to enter into a therapeutic relationship (see 5.2.3 e)
- Discuss with a child or young person, deemed able to provide informed consent on their own behalf, whether the child's parent/s or guardian/s should be informed (5.2.3f).
- Inform children and young people who are able to provide informed consent that the same rights with respect to confidentiality as adult clients including the right to refuse social work services (5.2.3 g) (in the absence of statutory requirements).
- Obtain informed consent from the child or young person's parent or guardian if they are deemed unable to give informed consent (5.2.3 h) however, the principle of client self-determination (5.2.2) establishes that 'social workers will promote self-determination and autonomy of clients, actively seeking to enable them to make informed decisions on their own behalf'. This is discussed in more detail in the final section regarding involuntary child clients.

Many agencies will have their own clear requirements and guidelines when establishing whether or not parental consent is required. If you are unclear on whether you need to establish parental consent to work with a young person, use of an ethical decision making tool or collaboration with your colleagues and supervisors may be able to assist you to work through the process of determining whether the child in question has the required maturity and level of understanding to give informed consent without the need to obtain parental consent.

## **Can I work with a child client when only one parent with parental responsibility has provided informed consent?**

Often young children or children who are assessed not to have the capacity to provide their own informed consent, are referred to social workers for counselling and other therapeutic services where only one parent has provided informed consent for the child to access services. The other parent, who may or may not, have equal, shared parental responsibility, may not be aware that their child is accessing social work services.

Social workers who are referred child clients are encouraged to ask the referring parent during the planning and contracting phase whether there is another parent with shared parental responsibility and to enquire as to whether this parent is aware of the referral. Generally speaking, and in the absence of any risk or other relevant factors, the advice is to seek written informed consent from both parents and to include both parents in any correspondence relating to the child's progress or in relation to any concerns and risks. Social workers in private practice should be cautious about accepting referrals where informed consent from both parents cannot be obtained. The general advice is that both parents should be provided with the same information at the same time in the absence of risk factors or any statutory requirements or court orders.

## **What should I do if one parent, with equal, shared parental responsibility does not consent to their child attending counselling?**

This can be very difficult for social workers to manage as it may be assessed to be in the child's best interests to engage in counselling or therapeutic interventions.

If the parents are separated and there is involvement through the Family Court, social workers are advised to seek information about any court orders or requirements with respect to the responsibilities and requirements of both parents; and any conditions of the court order that might be relevant to the social worker's service provision and parental consent.

Social workers are also encouraged to seek their own independent legal advice to clarify their legal responsibilities in certain situations if unsure.

When working with a child whose parents are estranged or where there is conflict, social workers should always remember that the child is their client, not one or both of the parents; and therefore decisions made should always be done so in the context of 'best interests' (of the child) principles.

While a social worker might assess that attending counselling or therapy is likely to be in the best interests of the child and might address the child's needs, consideration should also be given to the unintended consequences for the child if a social worker continues with counselling without the consent of one of the parents. For example, if a child is aware that one parent does not wish them to attend counselling, if conflict arises between parents due to a child attending counselling, or if a child is questioned (with a different agenda to simply being interested or concerned in the child's experiences of counselling) about what is discussed in counselling, the attendance at counselling might be counterproductive and the negative impacts on the child might outweigh any benefit they experience from attending counselling.

Social workers are encouraged to work through such issues with a professional supervisor or seek legal advice, as appropriate.

## **What should I do if a solicitor of a parent requests the case record of a child client?**

Child clients should be afforded the same rights to confidentiality and privacy as adult clients. If a request is made by a parent to access the case record of their child, the social worker should obtain the written informed consent of the child, if it is considered that they have the maturity and capacity to do so, before providing access to the information. If applicable, the social worker should also seek the permission of the other parent and offer to share the same information with them, again, with the child's informed consent. If the child is assessed not to have the capacity to provide their own informed consent, social workers should consider the context in which the information has been requested and, again, consider the best interests of the child. It might be appropriate to provide parents with general information about the progress of the child with respect to the counselling or therapy. This might be by way of writing a summary report of the client record, or providing parts of the client record that portray general information about the client's progress.

Social workers often report that parents (where there is family court involvement or conflict between parents) or solicitors of parents, request case records of child clients for legal purposes. Subpoenas, warrants or Court Orders are lawful requests for information and social workers are legally compelled to respond. However an email, a written letter or a verbal request for information from a solicitor are not official legal requests for information, and social workers are not compelled to respond, however it is recommended that the social worker liaise and communicate clearly with the solicitor and ensure that any action taken is in the best interests in the client. Please refer to the ethics and practice guideline on *Responding to a Subpoena* for further information.

It is also worth reflecting on the fact that, outside of the context of court ordered social work interventions, the purpose of social workers' engagement with child clients is to support children with presenting issues in a safe and child-centred environment. The purpose is not to create a client record to be used in family court or related processes and serve interests of parents and their solicitors.

Please refer to the ethics and practice guideline on *Information Management* for more information about access and ownership of social work client records.

## **Should I see an involuntary child client where a parent makes the referral and provides informed consent?**

If a parent refers a child to a social work service who is involuntary but *does* have the capacity to understand and consent to counselling, a logical extension of this capacity to consent to counselling principle is that the young person should have the right to refuse to engage in the social work service.

If a child who does not have the capacity to consent and is involuntarily referred to a social work service by their parent or guardian, it may be that parental authority overrides a non-consenting child's views, however before accepting such referrals, social workers should consider the therapeutic impacts on trying to engage a child in a social work service who does not wish to participate.

Social workers could refuse to accept a referral for a non-consenting child, even with parental or guardian consent, on the basis that the counselling may be counterproductive.

However, in some practice contexts, social workers might be faced with situations where they do not have the option to refuse to work with non-consenting clients, for example in statutory roles such as juvenile justice and child protection.

## **Further information**

For further enquiries please contact the Ethics and Practice Standards Consultation Service at [ethicsconsult@asw.asn.au](mailto:ethicsconsult@asw.asn.au) or at 03 9320 1044