

# Consent and parental responsibility for children 12-15 years in a specialist homelessness service

When a child presents unaccompanied to a Specialist Homelessness Service (SHS) their parents may be unavailable or not engaging with the SHS to provide consent for the child to access the service or exercise aspects of their parental responsibility.

Still, a parent retains legal responsibility for their child unless a court order has been made re-allocating Parental Responsibility to the Minister for Family and Community Services or another person.<sup>1</sup>

The Department of Communities and Justice (DCJ), Yfoundations, Homeless Youth Assistance Program (HYAP) services and the NSW Ombudsman have been working to provide greater clarity on the issue of consent and how it can be applied for children accessing homelessness services.

## Consultation with stakeholders

In 2019, DCJ consulted with relevant stakeholders<sup>2</sup> about SHS having legal authority, when they lacked parental consent for children under 16 years old. The overwhelming response was that:

- legislation should not be changed
- SHS do not wish to have decision-making powers and responsibilities
- DCJ should use current provisions in the *Children and Young Persons (Care and Protection) Act 1998*
- SHS providers (like health, education and justice) can continue to deliver services to children without having legal decision-making authority for the child

## Consent and decision making authority

SHS do not hold parental responsibility for a child in their service and therefore cannot make decisions on behalf of the child.

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<sup>1</sup> This Factsheet does not refer to children who are already under Parental Responsibility of the Minister

<sup>2</sup> The Under 18s Steering Committee (includes HYAP, Youth SHS, Yfoundations and DCJ representatives)

Under certain circumstances children are able to provide consent for themselves in relation to accommodation, medical treatment and education.

## Accommodation

According to the *Minors (Property and Contracts) Act 1970*<sup>4</sup>, a child under 18 can legally enter into a civil contract that benefits them, including accommodation, when they have sufficient understanding and benefit from the contract.

Section 122 of the Care Act requires a SHS to make a report to DCJ when a child (ie. someone under 16 years) presents unaccompanied to their service.

If a child does not appear to sufficiently understand and is therefore unable to provide consent to receive accommodation services from an SHS, the SHS must make a report to the Helpline detailing that:

- the child is homeless
- consent cannot be obtained for the child to use the service
- the child's physical and psychological needs are not being met

This will mean the additional vulnerabilities of the child will be documented.

Additional Helpline reports need to be made when parents are continuing to not engage and should be reported as neglect.

## Medical

At times a parent or other person with parental responsibility for a child is unavailable or unwilling to provide consent for their child to receive medical or dental treatment. In these cases, when a child is 14 years or older they are able to provide their own consent to treatment.<sup>5</sup>

A child younger than 14 may also be competent<sup>6</sup> to consent to their own medical or dental treatment. The treating medical or dental practitioner is able to determine whether a child has sufficient maturity and understanding to consent to their own treatment. This is assessed on a case by case basis.

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<sup>4</sup> [Minors \(Property and Contracts\) Act 1970, sections 18 and 19](#)

<sup>5</sup> [Minors \(Property and Contracts\) Act 1970, section 49](#)

<sup>6</sup> Gillick competent (landmark case giving precedent for children to provide consent to their own treatment) *Gillick v West Norfolk and Wisbech Area Health Authority and another* [1985] All ER 402

In cases where the child does not demonstrate sufficient understanding of what is proposed, treatment may still be provided in certain circumstances such as when the child requires urgent medical or dental treatment to:

- save their life
- prevent serious damage to their health<sup>7</sup>

## Education

In some situations parents or someone with parental responsibility for a child is unavailable or unwilling to provide consent for their child's schooling and education. In June 2021 the NSW Department of Education published a legal issues bulletin about students under 18 living independently, including children living in SHS. In these circumstances the child may either nominate an alternative responsible adult or provide their own consents.<sup>8</sup>

This alternative responsible adult may be a family member, a worker at the SHS/HYAP service or may be the child themselves. This person will be the school's point of contact for issues such as excursion permission notes and emergencies.

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<sup>7</sup> Children and Young Persons (Care and Protection) Act 1998, section 174

<sup>8</sup> <https://education.nsw.gov.au/about-us/rights-and-accountability/legal-issues-bulletins/students-under-18-living-independently>