



This sheet is intended to provide general information only, not advice. If you have a particular legal problem you should contact a solicitor. The Youth Advocacy Centre does not accept responsibility for any action arising out of reliance on this information. This section was last updated June 2009. This legal information is relevant to Queensland, Australia.

OVERARCHING RIGHTS BASED PRACTICE FRAMEWORK

When presented with an issue decide:

WHAT DOES THE LAW SAY I HAVE TO DO?

What does my **organisation** say I need to do?

What does my **personal/professional framework** suggest I should do?

Before you ask a question work out why you need the information - question your boundaries.

AND

Everyone has a **right to silence**. There is **no duty to report a crime**.

AND

Is the young person **Gillick Competent?**

In the essence, the test can be stated as:
Does the young person understand the physical, emotional and spiritual (including cultural) consequences of their decision both in the short term (now) and long term (in the future)?

It is important to remember you are assessing a young person's competence **not** the decision. The worker needs to assess each decision to be made.

In practice - what does this mean?

Is the young person *Gillick Competent?*

NO

YES

Does not owe a Duty of Confidentiality BUT:

- Best interests of THAT child in this particular situation
- Quasi legal considerations (eg. CROC).
- Ethics/professional standards
- What would a reasonable youth worker do in this situation?

Owe Duty of Confidentiality

If someone tells you information which they expect will not be repeated and is confidential in nature then you cannot repeat it.

If you owe a duty you cannot tell anyone including your work peers or supervisor/manager.

Except where:

- You have **consent** to tell someone else
- The **law** states you can tell someone else
- A subpoena
- There is an **immediate, identifiable and serious risk of harm**

AND

Negligence

a. Does the youth worker owe a duty of care to the young Person?.

AND

- b. What standard does a reasonable youth worker owe to a young person? For example:
- Discuss relevant strategies to assist
 - Provide appropriate referral options/ information (eg counselling, crisis numbers, legal support, housing)
 - Providing information regarding confidentiality policies of referral agencies
 - Safety plan
 - Assist in identifying issues that trigger concerns
 - Follow up appointments/plan to ensure supported
 - Strategies

AND

c. Has **damage been caused** by breaching the standard? Is it the sort of damage that the **law recognises**?

AND

S.197A Child Protection Act (1999)

Will not be liable if you report risk of harm to Department of Communities (Child Safety Services)
Also covers discussing information with colleague from same organisation to form a suspicion about whether a child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse

AND

Child Stealing/Abduction S.363 & S.363A - Criminal Code

Should not encourage a young person under 16 to leave home

AND

Child Protection Application may occur if RISK OF HARM

Assessment for risk of harm
Sexual and physical abuse automatically is risk of harm under S.9 of CPA

AND

Consent

Any information the worker collects and shares should be with the informed consent of the young person. **Informed consent** must be:

Voluntary^[1]

- not gained by deceiving the young person or putting them under pressure

Given with knowledge^[2]

- the young person needs to be aware of the choices and consequences of what they are consenting to

Specific to the issue being discussed^[3]

- Obtaining general consent (written or otherwise) from a young person prior to issues being discussed is not sufficient. It should be specific to the information that is to be released. A worker should continually confirm with a young person that consent still applies. If a young person confides in the worker and either withdraws their consent or requests for matters to be kept confidential, the original consent becomes invalid.

Capacity to consent^[4]

- If the young person understands the choices and the consequences of these choices then they have the capacity to consent (Gillick competent).

^[1] Beausoleil v Sisters of Charity (1964) 53 DLR 2d 65

^[2] Chatterton & Gerson [1981] QB 432

^[3] Murray v McMurchy [1949] 2DLR 442

^[4] Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112