Government of **Western Australia**
Department of **Health**

Information sheet 7

The Mature Minor, Consensual Sex and Child Sexual Abuse

Definition of mature minor

The High Court of Australia has adopted the test set out in the English case Gillick v West Norfolk Area Health Authority for determining a child's competence to make decisions for themselves in health matters. Generally, a child under the age of 18 years is assessed as being a 'mature minor' if they fully comprehend the nature, consequences and risks of the proposed action, irrespective of the presence or absence of parental consent. Under common law the 'mature minor' is deemed to be sufficiently mature and intelligent to make health care decisions on his or her own behalf, such as:

- consenting to medical treatment
- making other health care decisions
- authorising the sharing of his or her confidential information
- demanding confidentiality (in relation to anyone including his or her parents or guardian).

The assessment of a child as a 'mature minor' is not made on the child's chronological age alone; it is based on the child's experience, emotional maturity and intellectual capacity. Consequently, health workers must assess each child's competence on a case-by-case and health event basis. See: Working with Youth – A legal resource for community based health workers for further information (intranet access required).

Definition of consensual sex

The WA Criminal Code explains consent to sexual activity as:
Consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit or any fraudulent means (s 319 2)

The criminal code also specifies, as the Children and Community Services Act (CCSA) 2004 does not that:

A child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.

According to Ryan[1] (1997) , the key elements of consent include:

- understanding what is being proposed without confusion (not being tricked or fooled);
- knowing the standard for the behaviour in the family, the peer group and the culture (both parties have similar knowledge);
- having an awareness of possible consequences such as punishment, pain, pregnancy or disease (both parties similarly aware);
- having respect for agreement or disagreement without repercussion; and
- having the competence to consent (being intellectually able and unaffected by intoxication).

See:

NCPC: Age of consent laws, and
Information Sheet 7a: Assessing a child's ability to consent to sexual activity for further information.

[1]Ryan, G. (1997). Perpetration prevention. In G. Ryan & S. Lane (Eds.), Juvenile sexual offending: Causes, consequences, and correction (pp. 433-454). San Fransisco: Jossey-Bass

Definition of child sexual abuse

When a child (anyone below the age of 18 years) has been exposed or subjected to sexual behaviours that are exploitative and/or inappropriate to his/her age and developmental level. The CCSA specifies that sexual abuse includes circumstances where:

- the child is the subject of bribery, coercion, a threat, exploitation or violence; or
- the child has less power than another person involved in the behaviour; or
- there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour.

When a mature minor has engaged in consensual sex – duties of the health worker

Health workers are expected to monitor the care and protection of any mature minor under their care whom they know to be engaging in sex. If a sexually transmitted infection has been detected the health worker should, alongside the protocols with Communicable Disease Centre, follow the protocols set out in OD 0296/10 Interagency Management of Children Under 14 Who are Diagnosed With a Sexually Transmitted Infection (STI).

In some circumstances, e.g. if the child/mature minor is very young and/or there is more than a couple of years difference between the them and their sexual partner, the health worker may remain concerned about the minor's welfare, regardless of the mature minor's view that the sex is consensual. In particular where a child under 13 years has been assessed as a mature minor but the worker is concerned about their role and responsibilities in reporting this as a criminal offence to the police. In Western Australia there is no general legal obligation on health care professionals and other individuals to report the commission or suspected commission of an offence to the police. However, the responsibility to report child abuse and neglect, including child sexual abuse overrides the rights of the child/mature minor to confidentiality or privacy. See Guidelines for Protecting Children 2015 or Legal and Legislative intranet site for further information.

When a mature minor has been sexually abused – duties of the health worker

- With the introduction of mandatory reporting of child sexual abuse (January 2009), doctors, nurses and midwives are legally obliged to follow a standardised process of making a report to the Department for Child Protection and Family Support (CPFS) whenever they have formed a 'reasonable belief' that a child under 18 years has been or is being sexually abused. See Mandatory reporting of child sexual abuse for further information. If a health worker who is not a mandatory reporter develops a concern that a child has been sexually abused they are obliged under the WA Health Protection of Children Policy to report the matter to CPFS.
- When the child in question is a mature minor, this can raise specific dilemmas for both client and reporter, especially if the reporter is a mandatory reporter and so legally obligated to undertake a specific course of action, regardless of the wishes and opinions of the mature minor. Issues such as; the right to confidentiality, the right to have their own choices heard and respected, the desire not to involve police and/or parents, are matters which have specific relevance for the mature minor. Also, unlike younger children, mature minors are more likely to experience sexual abuse from people whom they might not necessarily ever see again thus giving rise to the view of the mature minor that they do not need any intervention to ensure current and future safety.

Managing the process of fulfilling the legal obligation to mandatorily report the sexual abuse, alongside engaging with and supporting the mature minor has been highlighted as an area of concern for health professionals. Please see Information Sheet 7b: Guidelines for the Mandatory Reporting of Child Sexual Abuse when the client is a mature minor for further information.

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 and guidance.