

# Informed consent of children

Under the Code of Health and Disability Services Consumers' Rights there is no minimum age of consent for treatment. The starting point is that all patients, regardless of age, are presumed to be able to make decisions about their own care and treatment (unless there are reasonable grounds to think otherwise). In other words, just because a patient is under the age of 16 years old (a child) does not necessarily mean they are unable to give informed consent. This factsheet provides an overview of what to consider when obtaining the informed consent of or for a patient who is a child.

## Consent of children

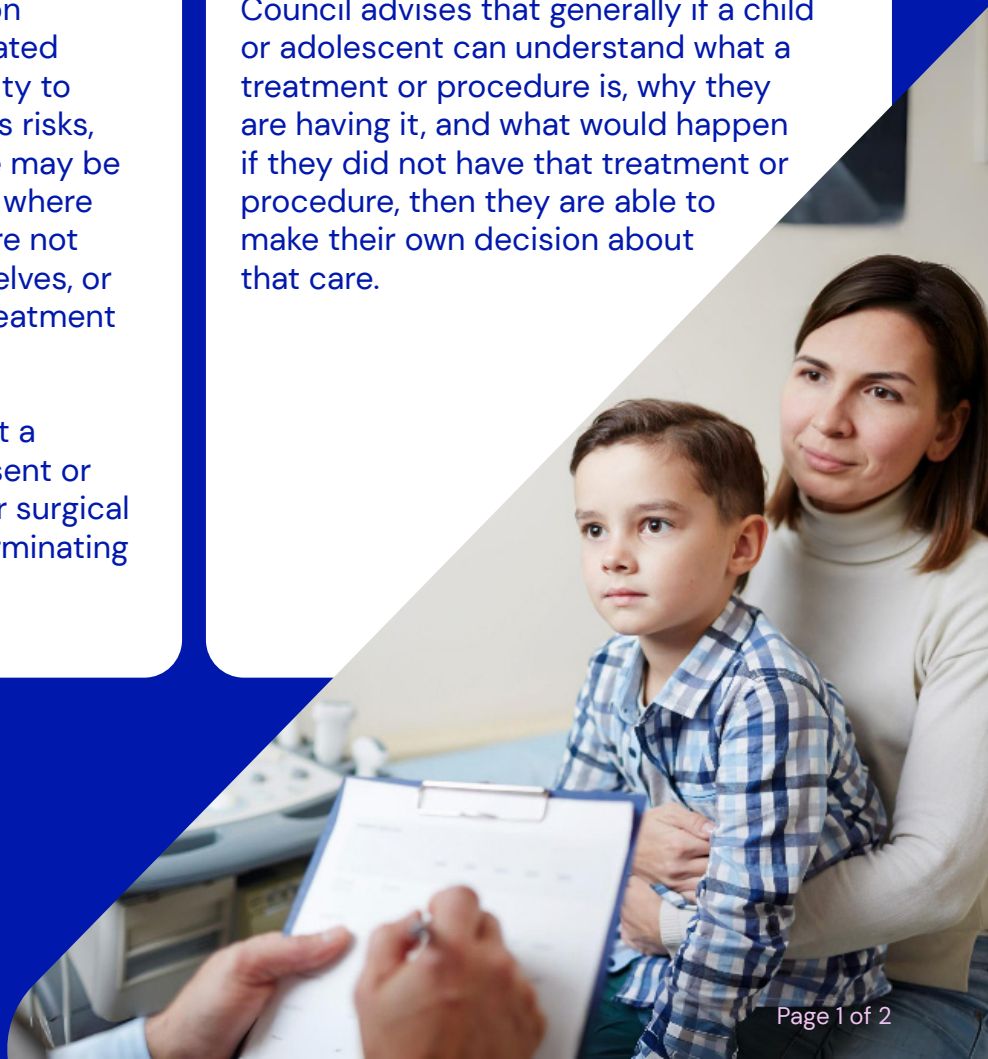
In New Zealand a person of or over the age of 16 is legally considered an adult able to consent or refuse to consent to medical treatment.<sup>[1]</sup>

A person under the age of 16 (a child) is also presumed competent and therefore able to make their own decisions about their care. However, depending on the type of treatment contemplated and the child's maturity and ability to understand the treatment and its risks, the presumption of competence may be rebutted. An obvious example is where the child is so young that they are not yet able to communicate themselves, or to comprehend the proposed treatment and its risks.

An exception to the above is that a female of any age is able to consent or refuse consent to any medical or surgical procedure for the purpose of terminating her pregnancy.

## Competence to provide informed consent

The test for evaluating whether a child is able to consent to medical treatment is known as 'Gillick competence'. It requires an assessment of the child's intellectual maturity and mental state to consent to that treatment. In its **statement on Informed Consent**, the Medical Council advises that generally if a child or adolescent can understand what a treatment or procedure is, why they are having it, and what would happen if they did not have that treatment or procedure, then they are able to make their own decision about that care.



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A child may be able to consent to certain medical treatments, but not others. For example, a 12-year-old may be able to consent to the removal of a tooth but lack the necessary maturity or understanding to consent to heart surgery. Alternatively, a child may be able to consent to certain parts of the proposed treatment only. In those circumstances, informed consent should be obtained to the extent possible. (See Right 7(3) of the Code).

Where a child is not competent to provide informed consent, the child's legal guardian can consent or refuse consent on the child's behalf. Where there is no legal guardian, consent can be given by a person in New Zealand who has been acting in the place of a parent.

As with adults, where a child is not competent to provide consent, and there is no one available to provide consent on the child's behalf, treatment may be provided in accordance with Right 7(4) of the Code.

Under Right 7(4) treatment may be provided so long as:

- it is in the patient's best interests; and
- reasonable steps have been taken to ascertain the views of the patient; and
- having ascertained the patient's views you believe on reasonable grounds that the treatment is what the patient would have wanted if they were able to decide for themselves; or
- if you have been unable to ascertain the patient's views, you have taken into account the views of others who have an interest in the patient's welfare.

It would be sensible also to discuss the treatment with an appropriate colleague before proceeding. The decision about treatment and the discussion which preceded it should be clearly recorded in the patient's clinical notes.

[1] Section 36 of the Care of Children Act 2004. It should be noted that legal guardianship of parents or court-appointed guardians continues until a person is 18 years old. In most situations where a patient is 16 – 18 years old and is not competent to give consent, a legal guardian will be able to provide (or withhold) consent on the patient's behalf.

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