Under Age Sexual Activity PHC Remote Guideline

Target Audience  | All Clinical Employees
--- | ---
Jurisdiction  | Primary Health Care Remote CAHS; Primary Health Care Remote TEHS
Jurisdiction Exclusions  | N/A
Document Owner  | Kerrie Simpson
  | Atlas Development Officer Primary Health Care Remote CAHS
Approval Authority  | Chair
  | Primary Health Care NT Wide Leaders Committee
Author  | PHC Quality and Safety Team; Sexual Health Guidelines Project Officer

The attributes in the above table will be auto-filled from the PGC System. Do not update in this document.

Purpose

To provide Primary Health Care remote staff with a guideline on the legal framework and mandatory reporting requirements relating to under age sexual activity under the Care and Protection of Children Act.

Guideline

1. General Information

There are two pieces of legislation providing the legal framework relating to under age sexual activity, namely the:

- **Criminal Code Act** (Section 131A) which makes it illegal to engage in sexual activity with people less than 16 years (the age of consent). It also specifically defines consent (see below).
- **Care and Protection of Children Act** which makes it an offence to engage in sexual activity with children of certain ages and in certain circumstances, and specifies the subsequent mandatory reporting requirements.

The Care and Protection of Children Act was introduced to promote the well-being of children (persons under 18 years of age) by protecting them from harm, abuse and exploitation. As all people under 18 years of age are potentially vulnerable, a health practitioner is required to carefully consider whether harm / abuse may have or is likely to take place. In all instances where staff are aware that a person under 18 is or is likely to be sexually active, they must make a judgement about whether harm occurred.

Whether sexual activity is consensual or abusive can be very difficult to determine.

Many young people begin normal consensual sexual activity around 14 to 16 years of age. In general however, the younger the person the more likely it is that sexual activity represents abuse.

Young people under 14 years are most vulnerable to sexual harm. The Care and Protection of Children Act mandates that all sexually active children under 14 years must be reported to the Territory Families Central Intake Team (CIT). There are also specific mandatory reporting requirements relating to people aged 14 to 15 years, and those aged 16 to 17 years, as outlined below. Once people reach 18 years of age they are legally considered to be an adult.

Complementary information is available in Sexual Abuse – Under 18s, Mandatory Reporting - Children and Mandatory Reporting Requirements under the Care and Protection of Children Act. See also:

2. **Definitions** (also Refer to Sexual Abuse – Under 18s for additional relevant definitions)

**Child:** a person less than 18 years of age or a person apparently less than 18 years of age if the person's age cannot be proved.

**Sexual Offence / Activity:** in relation to reporting requirements, this includes sexual intercourse, oral/anal sex, indecent touching or dealing or assault, sexual abuse, gross indecency, and making or, collecting indecent material with a child under 16 or exposing such a child to indecent material.

**Harm to a Child:** is any significant detrimental effect caused by any act, omission or circumstance on the physical, psychological or emotional wellbeing or development of the child. Harm can be caused but is not limited to the following:

- physical, psychological or emotional abuse or neglect of the child
- sexual abuse or other exploitation of the child
- exposure of the child to physical violence.

**Consent:** The Criminal Code Act under Section 192 Sexual intercourse and gross indecency without consent, defines consent as free and voluntary agreement. Circumstances in which a person does not consent include circumstances where the person:

- submits because of force, fear of force, or fear of harm of any type, to himself or herself or another person;
- submits because he or she is unlawfully detained;
- is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely agreeing;
- is incapable of understanding the sexual nature of the act;
- is mistaken about the sexual nature of the act or the identity of the other person;
- is mistakenly believes that the act is for medical or hygienic purposes; or
- submits because of a false representation as to the nature or purpose of the act.

3. **Responsibilities**

3.1 **Clinical Staff**

- Discuss the issue of confidentiality explicitly with all clients under 18 years of age early in consultations
- Explain the importance of and limits to confidentiality, eg disclosure of harm or being at risk of harm, and mandatory reporting provisions
- Consider warning signs of sexual abuse (see p4 of the Toolkit)
- Determine if there was harm or if the sex was consensual. Remember that the child may have been exposed to both consensual and non-consensual situations.
- **Do not ask extra questions or probe the child for information**, but rather receive information and provide support to the child
- If the patient is 14 or 15 years old, ask the age of the partner to determine the difference in age and document their response
- Be aware of and fulfil Mandatory Reporting Requirements under the Care and Protection of Children Act
- Discuss concerns / uncertainties related to under age sexual activity with the RMP / Community-based GP / Sexual Assault Referral Centre (SARC) / Paediatrician before deciding NOT to make a report
- Manage any care needs related to sexual activity, eg provide advice and protective behaviour education, encourage safer sex practices, support, manage Sexually Transmitted Infections (STIs), and
pregnancy, contraception in consultation with Rural Medical Practitioner (RMP) / Community-based General Practitioner (GP)

- Obtain informed consent from the young person and/or parents / guardians if medical treatment is required
- Notify the young person (and the parents / guardians for young persons under 16 years), if a notifiable disease (some STIs eg chlamydia, gonorrhoea, trichomonas, syphilis) is confirmed
- Maintain relevant documentation in the health record
- Liaise with the Sexual Health and Blood Borne Virus (SHBBV) Program, Territory Families, Child Abuse Taskforce (CAT) or other relevant personnel as required

3.2 Primary Health Care Manager (PHCM)

- Ensure new and existing clinical staff are aware of their Mandatory reporting obligations under the Care and Protection of Children Act. Also see Mandatory Reporting - Children
- Ensure relevant information is available to staff, such as the Toolkit for Managing Child Sexual Abuse
- Facilitate regular in-services on this topic for staff

3.3 Rural Medical Practitioner (RMP) / Community-based General Practitioner

- Provide clinical leadership to ensure appropriate clinical assessment and management
- Support the staff member attending the young person as required

4. Procedure

4.1 Identifying Sexual Abuse

The following information should be considered when you see any sexually active person under 18. It is important that you consider whether there is a risk of harm or exploitation. This can be difficult to detect in young people. Young people are more likely to disclose abuse when they are sure they can trust the practitioner. So take the time to build trust and learn about their situation. Try to make them feel comfortable about coming back at any time to talk more. You might even suggest they come back alone or with a trusted adult, because this can help you work out what's going on.

To assist in making a judgement about whether there is a risk of sexual harm you must explore three themes: consent, equality and coercion. Have a conversation with the child, and then ask yourself the theme questions below. If the answer to any of them is no, or there are other signs of harm / abuse, you must report the young person to the Territory Families Central Intake Team.

<table>
<thead>
<tr>
<th>Theme</th>
<th>Issues To Consider</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was the sexual activity <strong>CONSENSUAL?</strong></td>
<td>Was the young person willing? Did they have enough maturity (if under 16), knowledge to protect themselves, and understanding to consent? Were they affected by alcohol or drugs? Is the young person intellectually disabled or developmentally delayed?</td>
</tr>
<tr>
<td>Were the people involved <strong>EQUALS?</strong></td>
<td>Was there equal maturity (if under 16), and intellectual development between both parties? Was one person in a position of power?</td>
</tr>
<tr>
<td>Was the sexual activity free of <strong>COERCION</strong>, pressure, or force?</td>
<td>Did sex occur because of violence, fear, pressure, or bribery to gain goods or support substance addiction? Was there bullying by peers?</td>
</tr>
</tbody>
</table>

Your clinical assessment should include observation, examination where required, and all verbal and non-verbal responses to your questions. You should also consider other signs of abuse such as physical, emotional or behavioural signs.
See Toolkit for Managing Child Sexual Abuse p 4 for information about signs that may indicate child sexual abuse.

4.2 Age Related Responses

The response to sexual activity involving young people will depend on the age of the young person, and the circumstances surrounding the sexual activity. The necessary responses are detailed below.

Regardless of the age of the young person, or whether the young person is being reported, staff should consider the possibility that the young person may have contracted an STI and/or become pregnant. In the event of an STI, management according to the CARPA STM or Women's Business Manual (WBM) should be provided, including investigation, treatment, contact tracing and education regarding safer sex practices. When relevant, staff should liaise with the SHBBV Program staff regarding STI management and contact tracing. See below for when parents must be notified of a Notifiable disease.

In the case of pregnancy, this should be managed according to Women's Business Manual (WBM) protocols.

See also: Mandatory Reporting - Children, Mandatory Reporting Requirements and Guidelines on the Management of Sexual Health Issues in Children and Young People.

4.2.1 Young Persons – under 18 years

All persons in the Territory are required to report anyone under 18 years who is at risk of harm or exploitation. Any unwanted (non-consensual) sexual activity must be reported. This is because all persons under 18 are vulnerable to harm & exploitation.

4.2.2 Young Persons - aged 16 - 17 years

All persons in the Territory must report any 16 – 17 year old in a sexual relationship with a person who has a ‘special care relationship’ with that young person. For example, their step-parent, teacher, coach, boss, priest etc. This applies because although people of this age have reached the ‘age of consent’, they are still vulnerable to sexual abuse by people in positions of influence / authority, as it can be difficult for them to withstand sexual pressures from such people.

The requirement to notify the parents / guardians in the event of an STI is not required for this age group.

Work with the young person to ensure his/her current safety, and to provide education and support regarding protective behaviours, STI / HIV prevention and contraceptive advice.

4.2.3 Young Persons - aged 14 to 15 years

Registered Health Practitioners must report any 14 – 15 year old where they reasonably believe the person is sexually active with someone who is more than two years different in age. You must explore whether the sexual activity was wanted, and ask the young person the age of their partner. You must also record that you asked and the response. If the child does not tell you the age difference it is recommended that you report the child as it is better to err on the side of caution. Young people of this age are vulnerable to sexual abuse as they are less mature, generally have little knowledge about self-protection, and it is difficult for them to negotiate or say “No” to sex.

If assessment of the young person clearly identifies that the sexual activity is between developmentally normal peers aged within two years of each other, and is consensual, a report is not required.

Where a child under 16 years is judged to be engaging in consensual sexual activity with a partner who is more than two years older and is reported, there may be no direct repercussions for either the child or the partner. The Police may decide not to intervene because doing so is not in the best interests of the child, or the public.

If there is uncertainty about whether to report, contact the CIT on 1800 700 250, or the Sexual Assault Referral Centre to discuss the case.

Staff should work with the child to ensure the young person’s current safety, and to provide education and support regarding protective behaviours. Staff should also consider the potential for the young
person to be pregnant or to have contracted an STI. Management according to the CARPA STM / WBM should be provided and when relevant, staff should liaise with the SHBBV Program staff regarding STI management and contact tracing.

Under the Notifiable Diseases Act, for a confirmed notifiable STI, staff must notify the young person and the parents / guardians for the young person. Note that the requirement to notify parents / guardians overrides consent decisions by the young person.

In the event of pregnancy, see Pregnancy in a Young Woman.

4.2.4 Young Persons – under 14 years

All persons in the Territory must report to the CIT anyone under 14 years of age who is, or is likely to be sexually active. Health practitioners must report the person even if they come to the health centre with a parent / guardian.

This is because persons this age are extremely vulnerable to abuse as they are immature, they lack understanding about the meaning of sex, and "No" is difficult and is often not respected. Further, a child aged 13 years or younger is considered unable to make an informed decision about engaging in sexual activity, so whether or not it may be consensual is irrelevant.

Staff should also consider the potential for the young person to be pregnant or to have contracted an STI. Contraception and STI treatment and advice may still be provided to the person.

Under the Notifiable Diseases Act, where a notifiable STI is confirmed, staff must notify the young person and the parents / guardians for the young person. Note: This requirement to notify parents / guardians overrides consent decisions by the young person.

4.3 Young people involved in sex for favours

Young people under 18 years of age involved in sex for favours, or commercial sex work, should be treated as victims of abuse and the case reported to the CIT. The young person's needs require careful assessment. There must be a multidisciplinary approach to provide these young people with STI screening, treatment of any STIs detected and vaccination against hepatitis B and they must be given advice on contraception and STIs including HIV. This at risk group should be advised on the importance of regular STI screening and being treated if they have symptoms. They should be informed about Post Exposure Prophylaxis (PEP) for HIV and the Emergency Contraceptive Pill (ECP) indications and availability.

4.4 Consent to Medical Treatment

In the NT there is no statutory age of consent to medical treatment. However there is a legal precedent from the 'Gillick' case that recognises that children under the age of 16 are able to consent to medical treatment if the practitioner believes that they have the emotional maturity and intellectual capacity to do so. This is a matter of judgment for the treating practitioner and the practitioner must document how they determined that the child had the capacity to provide consent.

An exception to this is Termination of Pregnancy (TOP) in a young woman under the age of 16, for which the consent of her parents or legal guardians must be obtained.

4.5 Sexually Transmitted Infections in Under 18s

The majority of victims of sexual assault / abuse do not present with an STI. STIs in young persons may occur as a result of a consensual sexual relationship; however STIs may also be a marker of sexual abuse / maltreatment. In order to minimise the number of children in whom possible sexual abuse could go undetected, it is policy (see Guidelines on the Management of Sexual Health Issues in Children and Young People p 32) that all occurrences of STIs (or pregnancy) in young persons aged under 14 years are considered to be the result of sexual abuse until proven otherwise.

All cases of STIs in young persons under 14 years must be reported to the CIT so that appropriate social and physical assessments can take place.
For young people aged 14 years and older a more discriminating approach is required, which considers the context from available clinical and social information in determining whether the sexual activity was consensual, there was less than two years age difference between the partners, and did not involve a special care relationship. STIs in young people 14 years or older need not routinely be reported to the CIT unless there is suspected sexual harm / exploitation or other uncertainty relating to mandatory reporting criteria.

Management of the STI should be undertaken according to CARPA STM. Staff will need to consider whether the young person is mature enough to consent to treatment, or if consent is required from the parents / guardians. Where a young person indicates they do not want the parents / guardians notified, this should be recorded, however this would not override the clinicians’ judgement where consent from the young person is not valid. Where a parent / guardian is not notified of the decision to proceed with treatment, documentation should reflect that the young person understands the advice given.

Under the Notifiable Diseases Act when a notifiable STI is confirmed in a child under 16 years of age the parent/ guardian and CDC must be informed. Both the pathology laboratory performing the tests and the clinician have responsibility for this.

### 4.6 Pregnancy in a Young Woman

Pregnancy in a young woman under the age of 18 years requires careful assessment to exclude the possibility of sexual abuse. If there is any doubt about this, informal advice can be sought from the CIT by calling 1800 700 250, or SARC to discuss the case.

Information on the range of options for the pregnancy should be provided and discussed with the young woman. Staff will need to consider whether the young person is mature enough to consent to treatment, or if according to the young woman’s age, consent is required from the parents / guardians.

Management of the pregnancy should be provided according to WBM.

#### 4.6.1 Termination of Pregnancy (TOP)

If a TOP is considered it is important that counselling is offered to the young woman and that she receives careful, balanced and accurate information, see WBM. In the NT a TOP is legal up to 14 weeks gestation¹ and the woman must be assessed by two Medical Officers for the TOP to proceed. Legally a young woman under the age of 16 years cannot consent to a TOP. This requires the consent of her parents or legal guardians.

### 4.7 Contraception

Providing contraception for a young person under the age of 16 is a matter of judgment for the treating RMP / Community-based GP. See Consent to Medical Treatment. In addition, prior to prescribing or dispensing contraception, the Fraser Guidelines² require the health professional to be satisfied that:

- the young person will understand the professional’s advice
- the young person cannot be persuaded to inform their parents
- the young person is likely to begin, or to continue having, sexual intercourse with or without contraceptive treatment
- unless the young person receives contraceptive treatment, their physical or mental health, or both, are likely to suffer
- the young person’s best interests require them to receive contraceptive advice treatment with or without parental consent.

Even after consideration and addressing of legal and child protection issues, it is still appropriate to independently assess the need to protect the child from an unwanted pregnancy, and from sexually

---

¹ Note: Laws governing TOP differ between the NT, WA and SA, and a TOP after 14 weeks gestation may be performed interstate.

² Fraser Guidelines were laid down by Lord Fraser in the House of Lords
transmitted infections. There will be cases where it is appropriate to both offer contraception and to make a report under the Care and Protection of Children Act.

If the young person appropriately requests contraception, clinical staff should provide education and counselling, and a contraception care plan should be commenced and included in the Electronic Health Record (EHR).Clinical staff(7,13),(991,982) (preferably female with an interest or experience in women's health) should ask direct questions about sexual abuse, non-consensual sex and the age of any sexual partners. It is also important to discuss safer sex practices and the need for regular STI checks. If there is any concern, it is mandatory to make a report to the CIT (see Sexual Abuse – Under 18s). However staff should also continue to assess and offer contraception as appropriate.

The RMP / Community-based GP should only prescribe / dispense the contraception once all issues have been considered, answered and documented. A recall date for further treatment, re-prescription or removal as appropriate should be entered on the EHR recall system and explained to the young person.

4.7.1 Progesterone Only Contraceptive Implants (Implanon NXT®)

NT Department of Health (DoH) Registered Nurses and Midwives have been authorised to insert and remove the progesterone only contraceptive implant Implanon NXT®. See

- Progesterone Only Contraceptive Implants Insertion Removal - Authorisation NT Health Services Policy
- Progestogen-only Contraceptive Implant Insertion Guideline
- Progestogen-only Contraceptive Implant Removal Guideline

Note: Practitioners who do not meet the requirements specified in the policy are not authorised to insert or remove Implanon.

4.8 Protective Behaviours Education

Health professionals are in an ideal position to educate young people regarding protective behaviours, and a suggested approach is as follows:

- use visual aids where possible
- engage the young person in non-judgemental manner
- elicit from the young person their understanding of personal rights: their understanding of ‘consent’ i.e. right to negotiate sex, right to say ‘No’
- encourage discussion about times when young person has felt unsafe – how did they feel? – what did they do? – what would they have liked to have been able to do?
- Help the young person identify who they may feel safe to talk to about feeling unsafe, eg friend, teacher or other trusted adult
- Discuss safe and unsafe places; times i.e. after dark, after pubs close; activities i.e. getting into car with group of boys; unsafe / safe people and peers
- Discuss young person’s own risky behaviours i.e. alcohol and other drug use. Discuss the consequences of alcohol and drug consumption i.e. affects a person’s ability to make decisions and promotes risky behaviours and the effects these have on their body and brain
- Discuss strategies for the future: encourage the young person to verbalise a possible sex negotiation scenario
- Demonstrate condom use and why i.e. to protect against STIs: encourage the young person to verbalise a possible discussion with partner about use of condom
- Encourage to contact health professional if needing further support, including talking jointly with partner.
Document Quality Assurance

<table>
<thead>
<tr>
<th>Implementation</th>
<th>Method</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Document will be accessible via the Policy Guidelines Centre and Remote Health Atlas</td>
<td>Health Policy Guidelines Program Atlas Development Officer, Primary Health Care Central Australia Health Service</td>
</tr>
<tr>
<td>Review</td>
<td>Document is to be reviewed within three years, or as changes in practice occur</td>
<td>Atlas Development Officer, Primary Health Care Central Australia Health Service</td>
</tr>
<tr>
<td>Evaluation</td>
<td>Evaluation will be ongoing and informal, based on feedback.</td>
<td>Atlas Development Officer, Primary Health Care Central Australia Health Service</td>
</tr>
</tbody>
</table>

Key Associated Documents

<table>
<thead>
<tr>
<th>Forms</th>
<th>Reporting of Notifiable Conditions by Doctors Form</th>
</tr>
</thead>
</table>
| Key Legislation, By-Laws, Standards, Delegations, Aligned & Supporting Documents | Client Recall Systems  
| | Health Records - Documentation  
| | Mandatory Reporting – Overview  
| | Mandatory Reporting - Children  
| | Sexual Abuse - Under 18s  
| | Information Sheet: Mandatory Reporting Requirements - Care & Protection of Children Act  
| | Toolkit for Managing Child Sexual Abuse  
| | Guidelines on the Management of Sexual Health Issues in Children and Young People (See Reporting Child Sexual Harm Flowchart, page 47)  
| | NT Guidelines for the Management of Sexually Transmitted Infections in the Primary Health Care Setting  
| | Progestosterone Only Contraceptive Implants Insertion Removal - Authorisation  
| | NT Health Services Policy (intranet)  
| | Progestosterone-only Contraceptive Implant Insertion PHC Remote Guideline  
| | Progestosterone-only Contraceptive Implant Removal PHC Remote Guideline  
| | Notifiable Diseases Act  
| | Care and Protection of Children Act  
| | Criminal Code Act  
| | Primary Care Information System intranet  
| | East Arnhem Communicare System intranet  
| | For Gillick Competence, see Citizen child: Australian law and children's rights, Australian Institute of Family Studies  
| | Remote Primary Health Care Manuals website  
| | Central Australian Rural Practitioners Association (CARPA) Standard Treatment Manual  
| | Minymaku Kutju Tjukurpa - Women's Business Manual |
## Evidence Table

<table>
<thead>
<tr>
<th>Reference</th>
<th>Method</th>
<th>Evidence level (I-V)</th>
<th>Summary of recommendation from this reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>