

Guide for health professionals

Medical decision making for children and young people in care



This document is to assist health professionals to determine who has the authority to provide consent for the health and medical treatment of children and young people subject to child protection orders and in care. Please liaise with the child or young person's Child Safety Officer to seek further clarification if required.

Who can consent for the medical assessment or examination of a child or young person in care?

Section 97 of the *Child Protection Act 1999* provides the authority for a health professional to medically examine a child subject to an order granting custody or guardianship to the chief executive. This provision includes immunisation. It may be utilised despite parents retaining guardianship of the child.

Who can make health treatment decisions for children and young people who are in care?

The *Child Protection Act 1999* provides the Child Safety chief executive authority to delegate officers in specified positions within the department to provide consent for treatment and other health related procedures when a child is in the custody or guardianship of the chief executive – this is outlined in the table below.

In addition, when a child or young person is subject to a child protection order granting guardianship to the chief executive:

- carers are authorised to make the necessary immunisation arrangements of behalf of the chief executive
- carers are authorised to make the necessary arrangements for the child or young person to have a blood test, where one has been requested by a doctor to assist in diagnosis or medical intervention (excluding any DNA blood testing) - this consent is included on the 'Authority to Care – guardianship to the Chief Executive' form.

Doctors have the legal authority to proceed with treatment in a life threatening emergency situations where appropriate consents cannot be obtained prior to treatment, or the time taken to obtain appropriate consent would jeopardise the child's life.

Confirmation of the type of Child Protection Order a child or young person in out-of-home care is subject to can be found on the following documents:

- The Child Protection Order
- The Authority to Care form
- A letter signed by the appropriate departmental officer outlining what child protection order has been granted by the Childrens Court.

Gillick competency

Gillick competency is a legal term referring to a child's capacity to understand and provide consent for health care decisions

If a child or young person is assessed as Gillick competent, they can make their own medical decisions and doctors are not required to notify a parent or carer, however, the parent or carer may be aware of the situation and be providing support to the child.

If a child is not Gillick competent, the consent of the child's custodian or guardian is required.

An assessment of a child's Gillick competence is needed for each new health care decision.



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What does the child or young person need?	Who is to provide consent when Child Safety has custody and parents retain guardianship?	Who within Child Safety can provide consent when Child Safety has guardianship?
Day to day/routine health care	The child or young person's carer	The child or young person's carer Senior Team Leader Child Safety Service Centre Manager Child Safety After Hours Service Senior Team Leader or Manager
Prescribed medications to manage behaviour or mental health conditions	Parents	Child Safety Service Centre Manager Child Safety After Hours Service Senior Team Leader or Manager
Immunisation	Parents Medical practitioner – using <i>Child Protection Act 1999</i> , section 97	The child or young person's carer Senior Team Leader Child Safety Service Centre Manager Child Safety After Hours Service Senior Team Leader or Manager Regional Director
Blood tests (excluding DNA testing)	Parents	The child or young person's carer Senior Team Leader Child Safety Service Centre Manager Child Safety After Hours Service Senior Team Leader or Manager Regional Director
Dental – routine check-ups and treatment, not requiring a general anaesthetic	The child or young person's carer	The child or young person's carer Senior Team Leader Child Safety Service Centre Manager
Dental treatment, requiring a general anaesthetic	Parents	Child Safety Service Centre Manager Child Safety After Hours Service Senior Team Leader or Manager Regional Director
Invasive medical and surgical procedures or considerations	Parents	Child Safety Service Centre Manager Child Safety After Hours Service Senior Team Leader or Manager Regional Director
Acting on a second medical opinion	Parents	Depending on the type of illness/condition and proposed treatment: - Child Safety Service Centre Manager - Child Safety After Hours Service Senior Team Leader or Manager - Regional Director
Other decisions relating to medical matters requiring a guardian's explicit consent	Parents	Child Safety Service Centre Manager Child Safety After Hours Service Senior Team Leader or Manager Regional Director
Pregnancy termination	Parents	Regional Director
Contraception – when a child is under 12 years of age or a child is not considered "Gillick competent"	Parents	Regional Director
DNA testing	Parents	Regional Executive Director
End of life decisions	Parents	Director-General

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Child protection order types and impact on custody and guardianship

Nature of statutory intervention / order	Effect on custody and guardianship
Temporary assessment order	Child Safety has custody, the parents retain guardianship
Court assessment order	Child Safety has custody, the parents retain guardianship
Temporary custody order	Child Safety has custody, the parents retain guardianship
Transition order	Continues the custody and guardianship arrangements in place with the existing order
Child protection order (directive)	Parents retain custody and guardianship
Child protection order (supervision order)	Parents retain custody and guardianship
Interim order (made on adjournment of CPO)	Child Safety has temporary custody, the parents retain guardianship
Child protection order – custody to the chief executive	Child Safety has custody, the parents retain guardianship
Child protection order – short-term guardianship to the chief executive	Child Safety has custody and guardianship
Child protection order – long-term guardianship order to the chief executive	Child Safety has custody and guardianship until the child is 18 years