**Legal aspects relating to the Gateway Assessment process**

It's important that social workers understand the law relating to Gateway Assessments, so that they feel confident in discussions with children, young people, families and professionals.  This page summaries what social workers need to know.

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['Ownership' of outcome reports](file:///C:\Users\hfros002\AppData\Local\Temp\Temp1_Gateway.zip\Gateway\Legal%20aspects%20relating%20to%20the%20Gateway%20Assessment%20process%20-%20Doogle.htm#Ownershipofoutcomereports14)

**Information sharing**

Sharing information is an important part of a collaborative approach to care and protection. This can aid in identifying the risks and needs of children and young people. The purpose of information sharing within the Gateway Assessment process is to assist Child, Youth and Family to identify and provide responsive and effective services to children/young people and their families.

The collection and use of information by Social Worker’s within the Gateway Assessment process is governed by the Privacy Act, the Children, Young Persons and Their Families Act and to an extent the Official Information Act and the Health Act.

Personal information must be kept safe and secure and only released where there is authority to do so. It is particularly important to remember that information that has been gathered for one purpose cannot automatically be used to assist for another task being carried out by Child, Youth and Family. It is generally best to collect information directly from the person it involves, whenever possible.

Social Worker’s must consider the authority they have to share information before they do so. Within the Gateway Assessment process it is necessary for you to obtain consent from the person the information is about before the information can be gathered, used or shared. The consent forms are designed to provide clarity regarding authorisation. If you are unsure, check with your legal advisor.

Before using or sharing information, you will need to double check the terms of the consents as each case may vary.  For Gateway Assessments completed before March 2013 it may be possible for large excerpts of the Gateway report to be shown to/discussed at a Family Group Conference, but it is important to check first that this has been agreed to. It may be helpful to make a note about when and why you have used or shared information and reference that back to the consent gained (or attempts made to obtain consent). Obtain legal advice if you are unsure.

It is important to note that terms of consent for Gateway Assessments were changed after July 2013.  The consent form now authorises release of the Gateway Recommendations only, not the full report.  However, you can obtain specific permission to share/discuss aspects of the Gateway report if you consider it appropriate.  It is important to remember that the person being asked to consent is entitled to decline your request to share information at the FGC.

Gateway Assessment information brochures outline why consent is being sought, and the purpose of gathering, using and sharing information. Brochures need to be accompanied by a discussion with the guardian/s (and/or the competent child/young person) to ensure they understand:

* what they’ve consented to
* what information will be gathered
* what information will be shared, with whom and why.

Once consents have been obtained, the Social Worker requests  Education Information for the Gateway Assessment by liaising with the child or young person’s early childhood education provider, teacher, school or Resource, Teacher Learning and Behaviour (RTLB). The Gateway Assessment Coordinator/Health Practitioner leads the gathering of all other information. Talk with school principals and teachers so that they are confident about what the process involves and who the child’s information is being shared with. Working transparently is essential to the success of this interagency work and ongoing collaboration with families.  Remember though that the authorised flow of information is to you and to the Gateway staff.  The consent form only authorises release of the Gateway recommendations to the school/education provider.

**More Consents need to be obtained once the Gateway Assessment is complete.**  These fresh consents are needed before any recommended supports and services from Providers can be commenced.  .   This is usually when the Interagency Services Agreement is drafted and the three agencies meet to discuss the services or interventions that could meet the child or young person’s needs.  Consent is needed because counselling, treatment and most procedures recommended will generally be non-routine matters and are outside of the role of the CE as custodian.  The supports services will usually require consent of the guardians/competent child/young person.

[See Practice Centre for more information](http://cyf-practice-centre.ssi.govt.nz/policy/sharing-and-use-of-information/)

**Consent**

Although Social Worker’s sometimes make and inform about decisions affecting children/young persons as part of everyday practice, the Gateway Assessment is an extra and non-routine matter outside of the normal function of a custodian and Social Worker. The Gateway Assessment is comprehensive and designed to contribute to the child/young person’s development and thus requires consent from guardians (and/or from competent children/young persons).

Consent from the parent/guardian/s for the Gateway Assessment is required before:

* a child or young person can have a Gateway Assessment. (Except when the young person is 16 years old or assessed as competent to provide their own consent).
* the child’s teacher can provide Gateway Assessment information about the child or young person
* the Gateway Assessment Coordinator/ Health Practitioner can gather information about the child or young person
* the Gateway report can be written and provided to the Child, Youth and Family Social Worker
* the Gateway Recommendations can be shared with the child’s teacher, doctor and/or the child’s legal counsel

It is the Social Worker’s role to discuss the Gateway Assessment process with parents and guardians and request their consent. When discussing, be clear about:

* what Gateway Assessments are
* what sort of information we are seeking
* who we want to share it with
* why we want to share it
* how/why information may be shared even without consent (i.e. [section 66,](file:///C:\whats-on\projects\child-youth-family\health-and-education-gateway-assessments\legal-aspects-relating-to-the-gateway-assessment-process.html#POfficialInformationRequestsSection66P13) if there are safety concerns etc.)

The Gateway Assessment brochures provide a place for the guardian/s or young person to provide their written consent. This is a tear-off section. The written consent is kept by the Social Worker. The parent or young person keeps the brochure to remind them about the Gateway Assessment purpose and process.

To provide a thorough Gateway Assessment, the Health Professional may wish to gather information about the health of the mother and the father. Social Worker’s should also request consent from the mother/father so that the parent’s health information can be collected too. Explain that consent authorises the Gateway Assessment Coordinator/Health Practitioner to request their personal Health history. This may include mental health and any drug/alcohol abuse etc that might be relevant to or impact on the child or young person. The Gateway Assessment Coordinator/Health Practitioner is able to carefully decide whether the parent’s history is relevant to the child’s Gateway Assessment and the goal of identifying any health and/or education needs.

When seeking consent from the parents about their own health histories, confirm that some information about the parent may be included in the Gateway report that is shared with Child, Youth and Family. This report may also be shared with the child’s doctor, the teacher, the child’s legal counsel and possibly the FGC if there is specific consent given. Explain to the parents that they can control how much of their information is (or IS NOT) included in the Gateway report by discussion with the Gateway Assessment Coordinator/Health Practitioner.

It’s important for the Gateway Assessment Coordinator/Health Practitioner to see the parents’ health information so that it can be taken into account when recommendations are made in the Gateway report. If the parent wants to help their child, and will agree to make their health history available, but does not wish for Child, Youth and Family or others to have access to their information, that is okay. It’s helpful for Social Worker’s to see some detail in the Gateway report, but ultimately it’s not essential. You may need to double check that the Gateway recommendation does not inadvertently contain personal information about the parent that was not meant to be released. Gateway Assessment referrals will only be accepted by the Gateway Assessment Coordinator if it is accompanied with written consent.

**When no consent is given**

Social Worker’s must make a referral for Gateway Assessment within 10 days of the child/young person entering care. Most parents/guardians want their child or young person to have good health and education; however they will sometimes refuse consent if it is requested by the Social Worker who removed their child. Social Worker’s must make all reasonable attempts to gain the consent of the parents/guardians. If you are unsuccessful, record all attempts to obtain consent e.g. home visit, phone call, whanau meeting, counsel for child support and letter.  Discuss this with your supervisor. It may be that another person within CYF could request the consent and meet with more success.

If consent is not given, consider whether consent might be given if the Gateway Assessment Coordinator/ Health Professional requested that consent. Discuss this with the Gateway Assessment Coordinator without giving identifying details of the child/family. Often the health professional will be able to gain consent because they are removed from Child, Youth and Family and the decision that the child is in need of care and/or protection.

If consent is not able to be gained from the parents/guardians, the Gateway Assessment cannot proceed. Social Worker’s may want to defer the referral and try again to gain written consent at a later date.  A deferral should be discussed with your supervisor

If unsuccessful, and the Chief Executive is a guardian, consideration should be given to whether the matter of a Gateway Assessment should be brought to the attention of the Family Court as a Dispute between Guardians.  A legal consultation must occur to provide guidance in this decision-making process.

If a Court application is not considered the appropriate pathway then the Social Worker consults their supervisor and considers any appropriate further action to identify and meet the child or young person’s health/education needs.

In some cases a guardian may have mental health issues that affect their ability or willingness to consent. Consult your legal advisor in such cases.

**Age of consent**

Young people aged 16 years or older are legally competent to give consent to medical procedures and treatment (see Section 36(1) of the Care of Children Act 2004). Children and Young People who are younger than 16 years may also be competent to provide their own consent to the Gateway Assessment. This requires the Social Worker to carefully consider competency. In assessing competency, consider:

* The child’s age
* The child’s maturity
* The child’s history, e.g. do they have a history of capably making informed decisions competently or has their history shown them to be vulnerable and prone to making decisions not in their best interests
* Does the child fully understand what is being asked of them
* Does the child fully understand the consequences of consenting/not consenting?
* Can the child sufficiently weigh the relative benefits or advantages and disadvantages or risks?

If you consider that a child or young person is competent to provide their own consent to the Gateway Assessment, Social Worker’s will also discuss the proposed Gateway Assessment with the parents/guardians/caregivers because:

* important decisions ought to be communicated to the parents/guardian (See section 8 of the Children, Young Persons and Their Families Act 1989).
* consent of the parents is needed before their own health information can be accessed.

More information about gaining consent and the ability of children and young people to consent is available on the Child, Youth and Family Practice Centre:

[See the Practice Centre for more information about gaining consent](http://cyf-practice-centre.ssi.govt.nz/policy/caring-for-children-and-young-people/key-information/consenting-to-medical-examination-and-treatment.html)

**Confidentiality**

The child or young person and their parent/guardians are offered confidentiality when they share information under the Gateway Assessment process. The goal is to have them be free and frank with their sharing of information to the Gateway Assessment Coordinator/ Health Practitioner. This enables needs to be identified and services or supports recommended.

After the Gateway Assessment, a Gateway Report is provided to Child, Youth and Family. How much information is provided in the Gateway report is a matter that is discussed and agreed between the guardian(s) and/or competent child/young person and the Gateway Assessment Coordinator/Health Practitioner. Be clear with the guardian(s)/competent child/young person about the opportunity to provide information to the Gateway Assessment Coordinator/Health Practitioner on a confidential basis. Ultimately the focus is determining the health (and education) needs of the child or young person.

The Gateway report includes a recommendations section.  It is those recommendations only that can be provided to the FGC and other persons, as per the consent forms.  Always check the consent form before releasing any information.  The terms of release may vary from case to case.

There are exceptions to the confidentiality offered when there are concerns about the safety of the child or young person, such as, self-harm, harm to someone else, or the potential to be harmed by another person. If any of the professionals become aware of safety concerns, these should be raised with the Social Worker. And in addition, there is the potential for the Social Worker or Care and Protection Family Group Conference Coordinator to seek access to the Gateway report detail via a request under section 66 of the Children, Young Persons and Their Families Act 1989. This should only occur in circumstances where legal advice has been obtained.  Seeking access via section should not be the usual practice.

[See the Practice Centre for more information about confidentiality](http://cyf-practice-centre.ssi.govt.nz/policy/caring-for-children-and-young-people/keyinformation/consenting-to-medical-examination-and-treatment.html#Confidentiality6)

**Who has guardianship**

The law confirms that a guardian has the right, power and responsibility to contribute to the child or young person’s development and to make (or help make) important decisions affecting the child or young person, such as:

* Education: Where and How
* Changes to the child or young person’s Place of Residence: In particular changes that will affect the child or young person’s relationship with the parents/guardians.
* Travel: overseas travel and passport applications
* Culture, Language, Religion (if any): Choice of religious denomination and practice
* Healthcare: Consent to major medical, psychological, psychiatric or dental treatment/procedures, including blood transfusions, vaccinations, sterilization
* Choice of name: This applies to first and last name or family name and any changes
* Marriage: Consent to marriage of a young person aged 16 or 17 years

The Gateway Assessment is a non-routine health matter and thus consent will need to be gathered.

While the mother is automatically a natural guardian, the father is a guardian if:

* he was married to, in a civil union with or living with the mother at any time from conception to birth of, or if
* he is named on the birth certificate.

If the child was born before 1 July 2005, then the father is guardian if:

* he was married to the mother at any time from conception to birth, or
* living with the mother at the time of birth.

[See the Practice Centre for more information about other circumstances](http://cyf-practice-centre.ssi.govt.nz/policy/caring-for-children-and-young-people/key-information/custody-guardianship-and-wardship.html)

**Additional Guardianship**

At times, the Chief Executive (the CE) is a guardian, in addition to the natural guardians or in addition to other court appointed guardians.

The Care of Children Act 2004 (COCA) provides guidance about the role of a guardian and how that role must be exercised. COCA states “that a guardian of a child must act jointly with the other guardians”. (Section 16(5) Care of Children Act 2004.

When the CE is an additional guardian, the Social Worker makes contact with the other guardians, to seek their views and obtain their consent to decisions about important matters affecting the child/young person.

It may be necessary to remind others that the CE does not act solely as a Guardian, except in the very limited cases where the CE is the sole guardian.

**If a guardian can't be located**

Guardians/Additional Guardians can sometimes be difficult to locate.

Where you genuinely have made reasonable attempts to locate a guardian/s and they are not able to be located, and if you (and the guardian/s contacted) consider that the matter needs to be progressed in the interests of the child or young person, then those guardian/s who are contactable, can consent to the treatment or procedure. And, if you cannot locate any of the guardian/s despite reasonable efforts, then section 36 of the Care of Children Act authorises the Chief Executive to obtain consent from a person who has been acting in the place of a parent.  For example, if a grandparent has been caring for the child, and the guardians cannot be located after reasonable efforts to locate the parent, then the grandparent as caregiver can consent to the Gateway Assessment.  And, if there is no guardian able to be located and no person who has been acting in the place of a parent, then the Practice Leader can provide consent to the treatment or procedure on behalf of the Chief Executive.   . You must make adequate file notes outlining the steps you took to locate the guardian, and why you consider that you need to proceed with a decision about the treatment/procedure.

If you are unsure, obtain legal advice.

[See the Practice Centre for more information about Guardianship](http://cyf-practice-centre.ssi.govt.nz/policy/caring-for-children-and-young-people/key-information/custody-guardianship-and-wardship.html)

**What additional information can you attach to referrals**

Extensive background material can assist the Gateway Assessment Coordinator/Health Practitioner. Most referrals can be written using similar information as you would provide for a Care and Protection FGC referral. You may be able to copy and paste excerpts out of other relevant CYF assessments or reports, to highlight the main concerns and history. Most referrals will be a summarised story or bullet points. It may be helpful to attach relevant reports if you have authority to do so.

You can copy or attach information from appropriate social work sources, such as:

* case notes from visits or interviews with the child or their family
* social work observations and analysis
* Child and Family Assessments, Family Strengths and Risks Assessments
* Child and Family Consult tool, Three Houses tool
* Social Worker’s referral for a care and protection Family Group Conference
* CYF purchased psychological assessment (not a court ordered assessment)
* Social work screening tools: used when a young person may be at risk of self-harm, suicide, alcohol or drug abuse or psychological distress (e.g. Cage Kessler Suicide screens, TRAX)

Check to make sure that there were no conditions attached to the release of the information to CYF and remove information about third parties where appropriate.

You can cut and paste excerpts from the Social Worker’s report/plan if that information was held by CYF before being passed to the Court. Just cut and paste those parts that are relevant and summarise or expand the information to suit the Gateway Assessment purpose.

If results from the [Initial Health Check](file:///C:\whats-on\projects\child-youth-family\health-and-education-gateway-assessments\%20http:\cyf-practice-centre.ssi.govt.nz\policy\caring-for-children-and-young-people\resources\initial-health-check.html) are available, the Social Worker should attach this information to the ‘Referral to Gateway Assessment Coordinator’.

If the Gateway Assessment Coordinator has any queries or requires more information, they should contact the Social Worker for clarification.

**FGC's and Gateway Assessment referrals**

The social work referral for FGC can be included in the pack of information for a Gateway Assessment because the FGC referral is a record of the view of the Social Worker and is a record of information held by Child, Youth and Family.

The FGC plan is released only to a limited named group of persons, but the Family Group Conference Coordinator can authorise wider access to the FGC plan. Specific permission is needed from the FGC Coordinator before the FGC plan can be released. Or, the FGC can agree that the FGC outcome will be provided to the Gateway Assessment Coordinator/Health Professional.

**Share only authorised reports as part of the Gateway Assessment referral**

Share only those reports that you have authority to share. Consider whether;

* The report was requested and perhaps paid for by Child Youth and Family?
* Were any conditions attached to the release of the information to CYF?
* The information was obtained for the purpose of addressing care and protection needs for this child.
* The report has information about third parties that should be withheld.

Ask your legal advisor if you're unsure.

**Do not attach:**

Unless you have permission, do not attach the following to your FGC Gateway Referral:

* Social work plans prepared under section128 ,
* Social work reports prepared under s186
* Social Work reports prepared under section 132 (of the Care of Children Act)
* Social Work reviews prepared under section 135
* The FGC plan, unless it was agreed by the FGC or the Coordinator of the FGC allows it.
* Any specific information that the guardian or consenting child/young person has asked you not to release/share.
* Court ordered reports under sections 178 and 333

Section 437A and 438 of the Children Young Persons and Their Families Act prevent you from providing information about Court papers and detail of Court proceedings, unless the permission of the Court has been given. This means you cannot attach a Social Worker’s report or plan prepared for court, unless the court authorises the release. Your lawyer can assist you to obtain authority to release Court documents on the basis that providing access to the Gateway Coordinator is not publishing under sections 437A or 438\*.

\*(A social worker and care and protection FGC coordinator is unlikely to be in breach of section 438 of the Children, Young Persons and Their Families Act if they need to share the information as part of their statutory role. For example, a) a social worker may need to share information gained during the court proceedings in order to carry out their section 186 reporting role; b) a care and protection coordinator may need to share information gained during court proceedings to ensure that section 255 obligations are met. The person receiving the information is then likely to be bound by section 438.)

**Gateway Assessment outcomes**

The following reports/documents are likely to be created by the Gateway Assessment Coordinator/ Health Practitioner:

* Background report
* Gateway Report
* Interagency Services Agreement

The Gateway Assessment Coordinator/Health Practitioner considers who can receive these reports/documents. The consent forms are the primary guide.

A child, young person or parent/guardian has the right to decide who the Gateway report is shared with.   It may be that the guardian has withdrawn consent regarding release to one or all of those persons/agencies.

Remember the Gateway Assessment is primarily a health procedure that is not routine in nature and decision making primarily sits with the guardians/competent child or young person. It is their information that is collated and they are able to determine who may have access to that information. The primary goal is to have the Gateway Assessment completed and the needs and services identified.   The original consent forms anticipated a wide circle of persons who would have access to the Gateway Report or excerpts from that Report.  The updated consents now anticipate that the Social Worker will have access to the Gateway Report but that only the Gateway Recommendations will be provided to the FGC, School etc, as per the consent document.

**Be clear about the rules**

Be aware that the rules regarding information sharing of Gateway Assessments will differ depending upon the consent and conditions the child/young person and their family have placed upon the sharing of their information under Gateway Assessments. Always check the consents and discuss information release with the Gateway Coordinator.  Usually you will only be permitted to release the recommendations.

When obtaining consent, remember if there is more than one guardian, then they are required to act jointly. And, even when the child or young person is competent to consent themselves, most often CYF will at least inform the parents/guardians as required by Section 8 of the Children Young Persons and Their Families Act: Duty to inform section.

When obtaining consent to the Gateway Assessment, also explain that you are asking for consent to release the Gateway report. Bear in mind that the Gateway Assessment Coordinator will double check that consent to release before the Gateway report is released, so the terms of the original consent may be amended.

**New abuse findings**

Sometimes the Gateway Assessment will identify possible harm or abuse that **was not previously known**.  Social Workers may decide whether a new report of concern is requires.  Incases where the information indicates a new section 14 care and or protection ground, then the new information should be treated as a report of concern under section 15.

**Recommendations for treatments / procedures**

As a result of the Gateway Assessment recommendations, some children and young people will be referred to other specialists for follow up procedures or support services. Additional consent must be sought prior to a referral as treatment and procedures flowing from the Gateway Assessment are not covered in the original consent forms.

Obtain consent, from the guardian(s)/competent child or young person for release of information to the proposed service providers. Ensure the consent form is clear about the information that will be passed to the service provider.

**Providing access to the Gateway report**

If the Gateway report recommends subsequent referral for counseling or treatment or further assessment, you must first obtain the consent of the guardian/competent child or young person. When obtaining consent for the subsequent referral, also obtain consent to release some or all of the report to the Provider, as appropriate.

An exception applies to release of the report to the Family Court. It is okay to provide all or part of the Gateway report to the Court. (IPP11(a) and (e)(iv) Privacy Act 1993).

**Official Information Requests: Section 66**

Release of information gathered in the Gateway Assessment process occurs via the consent given by the guardian(s)/competent child/young person. The information is about them. They authorise both the process of information gathering and the process of information release.

From time to time there can be disagreements or uncertainty about whether the consent is broad enough to cover release of particular information to Child, Youth and Family. The amended consent form is now clearer about the intention that the Social Worker will be provided with the full Gateway Report.  However for consents signed on the original form, close attention needs to be paid to the consent document and the discussions held with the person the information is about.

Section 66 of the Children, Young Persons and Their Families Act may assist in those cases where Child, Youth and Family consider that the Gateway Assessment Coordinator/Gateway Health Practitioner holds further information that is necessary for the purpose of:

* determining whether the child or young person is in need of care and/or protection (except under s14(1)(e)), or
* any proceeding under Part 2 (the care and protection part of the Children, Young Persons and Their Families Act)

Remind the Gateway Assessment Coordinator about Section 66 as it compels Government Departments (including Health Boards) to release information for the above purposes. Given that confidentiality is discussed when consent is sought for the Gateway Assessment, it is best practice to avoid seeking additional information via section 66 except in limited circumstances. Discuss this with your legal advisor first to ensure section 66 is applied correctly. Consider a discussion with the guardian about the reason that CYF consider further information is needed. A practical example for utilising section 66 in the Gateway Assessment context might be that further information is necessary to assist in properly reporting to the court under section 186. Apply section 66 cautiously but it remains available in those situations where the Gateway Assessment Coordinator holds health information that is relevant and important for the Social Worker to perform their tasks under Part 2 of the CYPFA.

[More information about information sharing](file:///C:\resources\helping-clients\procedures-manuals\work-and-income\core-procedures\client-info-sharing\sharing-information-between-cyf-and-other-service-lines.html)

**'Ownership' of outcome reports**

After the Gateway Assessment a Gateway Report and Interagency Services Agreement is written. Whether the reports have an ‘owner’ can be a distraction from the issue of who may access and use the information. Ultimately the information belongs to the child or young person - it is primarily about them. CYF and Health and Education hold the information and may use that information according to their authorisations under the law. Each agency needs to consider the purpose for which they obtained the information and what rights of use they have. Essentially, the purpose is to identify the health and education and general wellbeing needs of the child or young person.

The parent/guardian(s)/competent child or young person make the decision about information gathering/release through their agreement (or not) to consent.

A Gateway Report is provided to Child, Youth and Family because Child, Youth and Family have requested it and have paid for it under the terms of the contract Child, Youth and Family has with each DHB.

Child, Youth and Family receive the full Gateway Report that is drafted by the Gateway Assessment team.  Other professions such as child’s legal counsel, the RTLB service and/or the GP may just receive the recommendations.  The recommendations will usually be drafted in a way that gives some brief background as to what issue/concern the recommended service/support will address.

Use of the information by Health, by Education and by Child Youth and Family is determined by their statutory roles/functions and their obligations in under the law, including the Privacy Act 1993.

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[**Resources & tools**](file:///C:\resources\)