



Supporting Information

Supplementary material

**This appendix was part of the submitted manuscript and has been peer reviewed.
It is posted as supplied by the authors.**

Appendix to: Ouliaris C. Consent for treatment of gender dysphoria in minors: evolving clinical and legal frameworks.
Med J Aust 2021; doi: 10.5694/mja2.51357.

1 Limits to parental authority in providing treatment consent

Routine medical procedures

In Australia, parents may consent to most routine medical treatments for their child (s61).¹ Broadly, parental authority for medical procedures diminishes as a child's capacity to consent increases and ends when a child attains *Gillick competence* or legal adulthood at 18 years of age (16 years of age in South Australia).² Where two or more parties hold parental responsibility, consent from one party is generally sufficient. However, where there is any dispute between the young person, persons with parental responsibility or treating medical practitioners, court involvement may be required to determine if treatment is in the child's best interests. In all cases, the young person should be involved in the consent process as far as possible.³

In assessing whether a young person has capacity to consent, the nature and complexity of the proposed treatment must be considered. For instance, a young person is more likely to have a sufficient level of understanding and intelligence that enables them to consent to receiving stitches for a minor wound than contraceptive treatment. Even where a minor is deemed to be *Gillick* competent, it is good practice to include persons with parental responsibility in the decision-making process where appropriate.⁴

State legislation. Two states have additional legislative provisions for consideration: In South Australia, children under the age of 16 may consent to medical treatment if they are deemed to have capacity to do so by two medical practitioners and this treatment is in their best interests (*Consent to Medical Treatment and Palliative Care Act 1995* (SA), s12).² In New South Wales, when a child 14 years or older has consented to treatment, medical practitioners have a statutory defence against any action for assault or battery (*Minors (Property and Contracts) Act 1970* (NSW), s 49).⁵ However, this legal flak jacket does not apply where there is a conflict between a child and their parent³ or to special medical procedures for children under the age of 16; the latter is an indictable offense (*Child and Young Persons (Care and Protection) Act 1998* (NSW), s 175).⁶

Special Medical procedures

Certain forms of medical treatment fall outside the scope of parental responsibility and require court approval because:

- There is a significant risk of making a wrong decision;
- The consequences of a wrong decision are particularly serious; and
- Treatment is invasive, permanent and irreversible, and not for the purposes of curing a (physical) malfunction or disease.⁷

Medical procedures that require court approval include, but are not limited to: sterilisation of a child with intellectual disabilities,⁸ pregnancy termination,⁹ experimental drug treatment,¹⁰ and bone marrow harvesting.¹¹

Approval may be granted by the Family Court of Australia under its welfare jurisdiction (s 67ZC)¹ or the Supreme Court under its *parens patriae* (parent of the nation) powers.

References

- 1 *Family Law Act 1975* (Cth).
- 2 *Consent to Medical Treatment and Palliative Care Act 1995* (SA).
- 3 Young L. Mature minors and parenting disputes in Australia: Engaging with the Debate on Best Interests v Autonomy. *UNSWLJ* 2019; 42: 1362-1385.

- 4 New South Wales Ministry of Health. Consent to Medical and Healthcare Treatment Manual [Internet]. St Leonards: NSW Ministry of Health, 2020
<https://www.health.nsw.gov.au/policies/manuals/Documents/consent-section-8.pdf> (accessed Aug 2021).
- 5 *Minors (Property and Contracts) Act 1970* (NSW).
- 6 *Child and Young Persons (Care and Protection) Act 1998* (NSW).
- 7 *Department of Health and Community Services v JWB & SMB (Marion's case)* [1992] 175 CLR 218.
- 8 *State of Queensland v B* [2008] QSC 231.
- 9 *Re: Baby A* [2008] FamCA 417.
- 10 *GWW v CMW* [1997] FamCA 2.
- 11 *Re a Declaration Regarding Medical Treatment for "A"* [2020] QSC 389.