



TRANS YOUTH PENALISED BY RE: IMOGEN FAMILY COURT DECISION

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RECENT legal changes are negatively affecting provision of timely medical care to Australian transgender youth, according to the authors of a Perspective published today by the *Medical Journal of Australia*.

After the 2017 Full Family Court ruling in *Re: Kelvin*, court approval for puberty suppressing treatment for Gillick competent young people was no longer needed for treatment to proceed.

"The decision provided much needed clarity, while also removing a costly, slow and psychologically harmful burden for trans youth and medical practitioners," wrote the authors, led by Professor Fiona Kelly from La Trobe University.

"Following the decision, Australian standards of care and treatment guidelines for trans and gender diverse children and adolescents were published and endorsed by the Australian Professional Association for Trans Health, the leading national body for professionals involved in the health, rights and wellbeing of trans, gender diverse and non-binary people.

"The guidelines, which were intended to reflect the decision in *Re: Kelvin*, stated that while obtaining consent from parents or guardians before gender-affirming hormone treatment is ideal, parental consent is not required when the adolescent is considered to be competent to provide informed consent."

That all changed in 2020 when the Family Court decision in *Re: Imogen* brought into question the clarity provided by *Re: Kelvin*.

"Two key changes to the law, and thus medical practice, flow from *Re: Imogen*," wrote Kelly and colleagues.

"First, it was held that the statement in the guidelines that parental consent for a Gillick competent child was ideal but not necessary was incorrect; consequently, since *Re: Imogen*, medical practitioners cannot lawfully administer either puberty suppression or gender-affirming hormone treatment without obtaining consent from both parents, even when the young person is assessed by doctors as Gillick competent.

"Second, it was held that a court application is required when there is any type of 'controversy' between parents, again even if a positive assessment of competency has been made."

Legal implications of *Re: Imogen* include undermining of the concept of Gillick competency, they said.

"The decision severely diminishes the decision-making capacity of competent trans young people."

The clinical implications of *Re: Imogen* are potentially devastating.

"Access to timely gender-affirming care is associated with improved mental health outcomes and overall wellbeing," Kelly and colleagues wrote.

"The erosion of the concept of Gillick competency diminishes the personal autonomy and agency of trans youth and directly affects their ability to access this care.

"At the same time, parental support is critical for the wellbeing of trans adolescents, and the decision in *Re: Imogen* may add an additional layer of distress to young people who are not supported in their gender identity by their family members or who are separated from a parent due to other circumstances (eg, family violence, parental estrangement).



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"This may [force] a young person to re-engage with a parent who has a history of perpetrating family violence, to disclose confidential personal information to an estranged or uninvolved parent, or to enforce legal barriers (including costs) when consent cannot be established," they wrote.

"The requirement for consent from both parents may not only deny trans young people timely, accessible health care but could also provide the opportunity for parents who are already a negative influence to engage in further interference and exacerbate past experiences of trauma."

Ethical problems with Re: Imogen include unjust discrimination, violation of the principles of beneficence and non-maleficence, and the fact that a lack of family support should be regarded as a vulnerability and not a means to impede medical care.

"Improving the health and wellbeing of trans youth requires respect for their right to autonomy, agency and access to evidence-informed health care," Kelly and colleagues concluded.

"Recent court decisions, both internationally and in Australia, erode the concept of Gillick competence. In doing so, these decisions may inflict additional harms on an already highly vulnerable population. Advocacy for legislative reform is therefore needed to protect the decision-making autonomy of trans youth."

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