

# Age of consent to medical treatment



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## Introduction

Consent to medical treatment can only be given by a person who is competent to consent. In general, Australian law recognises that individuals aged 18 years and over have full legal capacity, such that they are capable of making decisions relating to their own health care. Prior to that age, parents (or legal guardians) are entitled to consent to their child's medical and dental treatment. A parent's authority in this respect is not, however, absolute, as the law in Australia recognises that children become increasingly competent as they move towards adulthood.

## Legislation

Some states have legislation that addresses the issue of a minor's consent to medical treatment.

According to the Minors (Property and Contracts) Act 1970 (NSW), a child aged 14 years or over may consent to his or her medical or dental treatment, and the consent of the minor will be effective in terms of defending an action for assault or battery relating to the treatment. The NSW Act also allows parents of children under the age of 16 to validly consent to their child's medical or dental treatment.

The Consent to Medical Treatment and Palliative Care Act 1995 (SA) prescribes that an individual of 16 years of age or over can consent to medical and dental treatment 'as validly and effectively as an adult'. Provided that a medical practitioner, supported by another medical practitioner, believes that certain treatment is in the best interests of the child and the child is 'capable of understanding the nature, consequences and risks' involved, that child can validly consent to their own treatment. The SA legislation also provides that medical treatment can be administered to a child if the child's parent or guardian consents to it.

## The common law

The common law applies in those Australian jurisdictions that have not specifically legislated in relation to the issue of minors' consent to medical treatment.

The common law position relating to a minor's competency to consent to treatment was established by the English House of Lords decision in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, which was approved by the High Court of Australia in *Secretary, Department of Health and Community Services v JWB and SMB (Marion's case)* (1992) 175 CLR 218. In *Gillick*, it was held that the authority of a parent decreases as their child becomes increasingly competent. *Gillick* prescribes that the parental right to determine their child's treatment terminates once a child under the age of 16 is capable of fully understanding the medical treatment proposed. Whether a particular child has the requisite intelligence and understanding to give a valid consent is a question of fact.

While *Gillick* holds that a minor who has a requisite level of understanding may consent to treatment, this does not amount to a corresponding right to refuse treatment. Hence, an adolescent who is competent according to the principles established by *Gillick*, will generally lack the capacity to refuse life-saving treatment if his/her parents are prepared to consent to it.

## Role of the courts

In *Marion's case*, it was held that courts may exercise a general supervisory role to act to protect the best interests of the child. This guardianship jurisdiction permits courts to overrule parents (and/or their *Gillick* competent children) who have refused treatment, and to authorise treatment based on the concept of 'best interests'. In addition, courts are capable of adjudicating disputes that relate to a child's proposed medical treatment in the event of a conflict between parents and children, or involving parents, children and medical practitioners.

## Conclusion

In general, once a child attains the age of 18 years, they are considered to be a fully competent and autonomous individual. However, in Australia, there exists legislative provisions and common law principles that recognise the developing competency of adolescents to make decisions regarding their own medical treatment. As a result, parents and their teenage children in this country hold concurrent rights to consent to the child's treatment.

In circumstances where the legal position on consent to treatment is unclear, or in a situation where the wishes of parents, the child and medical practitioners conflict, the court's guardianship jurisdiction may be invoked to resolve any confusion or dispute. The court will then make its decision based upon the best interests of the child.