

Children, medical decisions and family law in Victoria

Author: Ben Smith
Email: ben@smithfamilylaw.com.au
Date: **Monday June 15, 2026**

The Federal Circuit and Family Court of Australia, in addition to making orders about where a child lives and the spend time arrangements for parents, has the power to hear applications about a child's medical treatment where the parents are in dispute. In family law parenting matters, decisions for a child to undergo a major medical procedure can be a significant point of conflict between parents and may require the Court's involvement to make a decision.

In this blog, we will look at the rights and responsibilities for parents and children regarding medical treatment, the Gillick competency test, and Court's powers around major medical procedures for children in parenting proceedings.

What is a 'major medical procedure' in family law?

In family law proceedings, a 'major medical procedure' for a child is one that is for a purpose other than treating a bodily malfunction or disease (such as cosmetic surgery or gender affirming surgery) and there is a dispute about either:

- The Gillick competency of the child; or
- The diagnosis or treatment of the child of gender dysphoria.

Children's rights and medical consent in Australia

When it comes to major medical procedures, children in Australia are not presumed to have decision-making capacity as adults do. Generally, children cannot undergo a major medical procedure without their parents' consent. However, in some circumstances, a child may not need parental consent if they are considered to be a 'mature minor'.

What is Gillick competency?

A ‘mature minor’ is a child under 18 that is considered to be capable of making their own decisions regarding their medical treatment and does not require the consent of their parents. Only a doctor is able to determine if a child is a ‘mature minor’ for this purpose, using the list of considerations set out by the United Kingdom Court in the case of Gillick v West Norfolk and Wisbech Area Health Authority (1985). These considerations include:

- the age and maturity of the child
- sufficient understanding of the nature of the medical treatment that is proposed and its potential impact, including the risks associated with the treatment
- the independence and life experience of the child, including whether they live at home or support themselves; and
- the ability of the child to explain their reasoning for wanting or not wanting the treatment.

A child found to be Gillick competent can give informed consent to major medical procedures, even if one or both of their parents do not agree.

What is gender dysphoria?

‘Gender dysphoria’ is a diagnosis recognised in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The diagnosis may apply where a person experiences clinically significant distress associated with an incongruence between their gender identity and their sex assigned at birth. This distress can affect a person's wellbeing and may be associated with other mental health conditions, including anxiety or depression.

Not all people who experience gender dysphoria seek gender-affirming medical treatment. However, where a child is involved in parenting proceedings and seeks gender-affirming treatment or another medical intervention related to gender dysphoria, the Court may be asked to determine issues relating to that treatment.

Do both parents need to consent to a child's major medical procedure?

Parents, guardians or a person with parental responsibility of a child can make decisions about their medical treatment if they are willing, able and reasonably available to do so, in accordance with section 55(4) of the Medical Treatment Planning and Decisions Act 2016 (Vic).

In circumstances where no family law orders have been made regarding parental responsibility, the Family Law Act states that each parent of a child under 18 has parental responsibility for that child. This means that, in the absence of any Court orders, each parent of a minor child can also be a decision maker for major medical procedures. This responsibility may not necessarily be diminished if one parent is less involved with raising the child, the parents are separated, or the child lives primarily with one parent and not the other.

Major medical procedures and parenting proceedings in Victoria

If you and the other parent are unable to agree on whether your child should undergo a major medical procedure, you can seek that the Court make an order to resolve the dispute.

The party seeking to begin court proceedings about a child's major medical procedure must file an Initiating Application and the required supporting documents with the Court. The supporting documents include an affidavit explaining the reasoning for the orders sought, and a certificate confirming that the parties, usually the parents of the child, have either attempted family dispute resolution to resolve the matter or are exempt under the Family Law Act.

If you are seeking advice about attending mediation for parenting matters or if an exemption applies to you, please contact us for an initial appointment with one of our experienced family lawyers.

Ultimately, the Court has the power to make a decision that goes against the child's wishes or the positions of the parents depending on whether they consider the major medical procedure to be in the child's best interests. Any parenting order made by the Court must place the best interests of the child as the paramount consideration, and any decisions on major medical procedures are subject to the same requirement.

In the case of Re Imogen (No. 6) [2020] FamCA 761, a teenager diagnosed with gender dysphoria and assessed by her doctors to be a 'mature minor' expressed that she wished to undergo hormonal therapy to affirm her gender identity. The father supported the child's wish but the mother opposed the diagnosis and argued that the child was not Gillick competent, and did not consent to the child undergoing hormonal therapy.

The Court accepted that the child had been diagnosed with gender dysphoria, and her level of maturity and intelligence demonstrated she was Gillick competent. The Court further determined the child had sufficient understanding of hormonal therapy and had made a balanced and informed decision in providing her consent to the treatment, and that receiving treatment was in her best interests to manage her gender dysphoria and associated psychological health.

Speak with a Melbourne family lawyer

If you have questions about consenting to a major medical procedure for your child, or need help resolving a dispute with the other parent, our Melbourne family lawyers are here to help. Smith Family Law has offices in Melbourne, Sunshine and Williamstown - contact us today to arrange an initial appointment. Our experienced family lawyers can assist you in exploring your options and understanding the rights of you, your child, and the child's other parent in medical and other parenting matters.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.