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Legal Procedures for Transgender Children

from an [Inner City Legal Centre](#)  [handout](#)

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Background

In Australia it is usually a parent or guardian's responsibility to consent to medical treatment for children (i.e. persons under the age of eighteen). In certain cases, generally called 'special medical procedures', however, the Family Law Act gives the Family Court of Australia the power to make orders relating to the welfare of children. In these cases the Court "must regard the best interests of the child as the paramount consideration". Any proposed medical treatment of a child that is irreversible (as in the treatment for gender dysphoria) is considered a 'special medical procedure'.

Court involvement is required because:

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

Treatment

Children diagnosed with gender identity disorder may undergo treatment typically conducted in two phases:

Phase 1: involves hormone treatment to suppress puberty. This phase, sometimes called 'puberty blocking' is reversible.

Phase 2: involves hormone treatment to stimulate physical changes to bring about the characteristics of the affirmed gender, with estrogen or testosterone.

This treatment usually commences after the child turns sixteen and is not readily reversible. Depending on the kind of treatment and whether there is any disagreement about it, court involvement may be required.

Phase 1 treatment

When is court authorisation not required?

If the child, the child's parents and treating medical practitioners agree that the child should commence Phase 1, there is no requirement for the court to authorise treatment. Treatment can commence when the child's medical team considers it appropriate.

When is court authorisation required?

If there is a disagreement between the parties about whether Phase 1 treatment should be provided or what form it should take, the court will make a determination.

Phase 2 treatment

Phase 2 treatment requires court involvement because it is only reversible with surgical intervention.

If the parties agree to commencement of Phase 2 the court must be satisfied that the child fully understands the consequences of commencing treatment and can give informed consent. This is called the 'Gillick' competency, based on a British judgement about the competency of a child under the age of sixteen to give consent to specific medical treatment. Whether a child is Gillick competent must be determined by the court and must address the proposed treatment and its effects and the child's capacity to make an informed decision.

When is court authorisation not required for Phase 2 treatment?

When a court determines that a child is Gillick competent and the various parties agree that the child should commence Phase 2.

When is court authorisation required?

When a court decides a child is not Gillick competent or there is a dispute between the parties regarding Phase 2 treatment or Gillick competency.

Under [N.S.W.](#) legislation special medical treatment for children under the age of sixteen is also subject to certain restrictions and is

defined as "any medical treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out, unless it is intended to remediate a life-threatening condition or from which permanent infertility is an unwanted consequence"

Phase 2 treatment for gender identity disorder would most likely be considered a 'special medical treatment' as it is treatment that is reasonably likely to render a person permanently infertile.

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The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.