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LawTalk Blog



Gender Dysphoria, Children and the Family Court

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Over the past decade, there has been a growing trend of applications to the Family Court of Australia for the authorisation of medical treatment of children who have been diagnosed with Gender Dysphoria. It was reported that between 31 July 2013 and 16 August 2017, the Family Court dealt with 63 cases involving applications for treatment for Gender Dysphoria. The current rate of these type of applications is unknown.

The decision of *Re Kelvin*[2017] FamCAFC 258

In December 2017, we [posted a blog](#) on the decision of *Re Kelvin* [2017] FamCAFC 258 which was a case that considered whether a 17 year old child with Gender Dysphoria was legally competent to make a decision about receiving further treatment to continue their transition from female to male.

The Full Court of the Family Court ultimately decided that Kelvin was legally competent to consent to the further treatment.

Since this decision, society has continued to evolve, however, consent to medical treatment is still not a simple area of law and still sometimes requires court intervention.

How do you know if you need to consider making an application to the Family Court for consent to medical treatment for your child with Gender Dysphoria?

What is Gender Dysphoria?

Gender Dysphoria is when someone has a persistent and profound discomfort with their biological sex and a strong identification with the gender of the opposite sex. It is a medical condition in the Diagnostic and Statistical Manual of Mental Disorders (“the DSM”). For a child to be diagnosed with Gender Dysphoria, there are certain criteria that needs to be met before a diagnosis will be made.

Once a diagnosis is made, children are able to medically “transition” to the gender that they identify with. This is usually undertaken by a three-stage process:

1. The suppression of puberty – this treatment is fully reversible;
2. The administration of hormones, either testosterone or oestrogen. These treatments have reversible features;
3. Surgery – which is irreversible.

When should the Family Court step in for Gender Dysphoria?

Normally, the Family Court of Australia steps in where decisions fall outside the normal realms of parental consent. This is because parents have ‘[parental responsibility](#)’ where they are able to jointly (or solely with a court order) make medical decisions about their children that are in line with their best interests.

The power that allows the Court to make orders for medical treatment if required is pursuant to Section 67ZC of the *Family Law Act 1975*.

Unfortunately, there is still no clear line between the type of medical procedures that fall within the realm of ‘parental responsibility’ and those which require court authorisation.

In the past, the Family Court has had to make decisions on the following types of medical issues:

- sterilisation of a young person with an intellectual disability
- cardiac surgery on an infant without parental consent
- administration of experimental non-approved drug treatment
- bone marrow harvest
- treatment for people with disorders of sexual development
- sex reassignment surgery

When it comes to Gender Dysphoria, as a result of the decision made by the Court in *Re Kelvin*, both the first and second stage of treatment (being the administration of hormones) no longer require court authorisation if the child consents and the parents and medical practitioners agree with the treatment.

However, when one or both of the parents, or a medical practitioner, does not consent to the treatment for the child and that treatment is in their best interests, it is likely that in these circumstances that Family Court intervention will be necessary.

There are certain rules and procedures that need to be adhered to when making an application to the Family Court for consent to medical treatment. It is important that you obtain specialist family law advice to ensure your application meets these requirements.

Andersons Solicitors has a specialist and experienced [family law](#) team who can guide you through this process. [Contact](#) our family law team today.

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