

# The Critical Role of Family Support in Accessing Gender Affirming Health Care

**A pathway to better outcomes for transgender youth.**

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Overburdened and underfunded gender clinics, underfunded family support organisations, and discriminatory medical consent procedures are driving poor health outcomes for transgender youth. The Australian Government must act by developing a national health and wellbeing strategy. To not do so will lead to increasingly fatal consequences for transgender youth.

In Australia and across the world, it is estimated that 2–3% of young people identify as transgender and/or gender diverse (trans).<sup>1,2</sup> The number of trans young people and their families seeking access to gender affirming medical services rises each year. This is attributed to a 'growing acceptance from parents, doctors and peers'<sup>3</sup> about gender diversity. Increasing levels of media visibility, social policy improvements, and some level of protection in anti-discrimination legislation has created a supportive environment for young people to disclose their feelings and seek support.<sup>4,5</sup> Despite some being able to access care, many trans youth face discrimination, bullying, and barriers to care resulting in one of the highest rates of suicide attempts and depression in Australian society.<sup>6</sup>

### Risk factors for trans youth

Substantial evidence points to what helps trans young people fare better with their mental health and wellbeing.<sup>7-10</sup> It includes school, family and peer support, and timely access to gender affirming treatment. Trans Pathways, the largest Australian study into the mental health of trans young people found that almost two thirds (68.5%) report low levels of family support. Experiencing low levels of family support was associated with '... higher rates of suicidal thoughts, wanting to hurt themselves, suicide attempts, self-harming, reckless behaviour, and diagnoses of eating disorders, anxiety, depression, and PTSD ...' compared to those reporting higher levels of family support.<sup>11</sup>

Other related risk factors include stigma and discrimination, homelessness, bullying, and harassment.<sup>12-14</sup> Almost half (48.1%) of transgender and gender diverse people aged 14 to 25 have reported that they had attempted suicide in their lifetime.<sup>15</sup> It is a matter of urgency to consider the early interventions available to prevent the high

incidence of poor mental health and suicidality. This will not only benefit trans young people, but there is considerable benefit to the public health system by intervening with early service provision to avoid the creation of long term mental health and other issues.

The largest study ever conducted on trans adults who reported seeking gender affirming treatment during adolescence has shown that when younger trans people are able to access gender affirming health care, their later life mental health experiences are improved significantly. The study of nearly 28,000 participants showed that early treatment was associated with better mental health outcomes and significantly reduced levels of suicidal ideation.<sup>16</sup>

*'Helping young people by referring them to gender clinics and acknowledging their gender identity is not just being nice, it's preventing harm and improving their mental health in the longer term.'*<sup>17</sup> – Dr Fiona Bissshop, former President of the Australian Professional Association for Trans Health.

### What is gender affirming medical care in Australia?

*'Patients with gender dysphoria require access to expert care and treatment. Withholding or limiting access to care and treatment would be unethical and would have serious impacts on the health and wellbeing of young people.'*<sup>18</sup> – Associate Professor Mark Lane, former RACP President.

Gender dysphoria is defined as significant distress or functional impairment associated with incongruence between the internal sense of gender and the sex assigned to someone at birth.<sup>19-22</sup> While social affirmation (changing names, pronouns, gender expression) is the first step for many trans children and adolescents in gender affirmation, medical affirmation may be necessary for adolescents approaching puberty. The decision to undergo medical affirmation is carefully considered and involves detailed multi-disciplinary assessments to attain a diagnosis of gender dysphoria.

National guidelines describe options including:

- **Under 18 years:** Stage 1: puberty suppression with puberty blockers; and Stage 2: gender affirming hormone therapy
- **18 years and over:** Stage 3: gender affirming surgical procedures (in some cases a 16 or 17 year old trans masculine person may benefit from a chest reconstructive procedure, however, it is national and international standards to not perform any surgery on a person under the age of 18).<sup>23</sup>



Image credit: Penny Ryan courtesy of Transcend.

Throughout this process, psychological support for the young person and families is essential.<sup>24,25</sup> Family and parental support is one of the key protective factors for trans youth. Yet a key policy issue is the limited amount of funding available to community led family support organisations who can provide this critical support. Other policy issues include under-resourced medical services, limited workforce capacity to deliver gender affirming care, and discriminatory consent procedures for trans youth, which in the event of a parental dispute, involve an application to the Family Court.

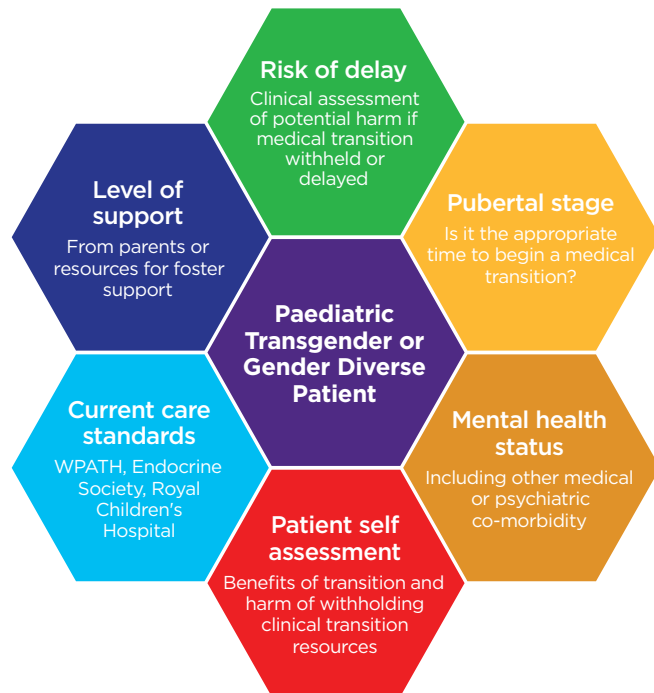
### Policy inaction and its impact on trans young people

Despite mounting evidence pointing to a health crisis among trans youth and calls to act from the Royal Australasian College of Physicians (RACP), there has been a lack of a coordinated national response from the Australian Government. National mental health strategies and policies and the *National Action Plan for the Health of Children and Young People* omit the needs of trans youth.<sup>26,27</sup> Meanwhile, the number of trans young people and their families presenting at medical clinics who require support from the public health system is growing rapidly and their health disparities remain in need of national attention. The Royal Children's Hospital Gender Service in Melbourne has seen an increase in new referrals from one in 2003, to 821 in 2021 and these numbers continue on an upward trend.<sup>28</sup>

### The medico-legal landscape regarding consent for the treatment of trans young people in Australia

Competence to consent to medical examination and treatment by children under the age of 18 years is known as *Gillick*-competence.<sup>28</sup> This is determined by a clinician who has assessed the child as having sufficient maturity and intelligence to understand the nature and implications of the treatment proposed.<sup>29</sup>

Since 2004, decision making with regards to gender affirming medical and surgical treatment for trans young people has not been determined by a clinician's assessment of the young person as *Gillick*-competent, as is the case for all other medical treatments, but by a legal process involving the Family Court of Australia. While the law has evolved since the first case, known as *Re Alex* (2004), recent developments prompted by a case



**Figure 1.** Areas to consider when assessing a paediatric transgender or gender diverse patient. WPATH, World Professional Association for Transgender Health. Source: Dubin, S., Lane, M., Morrison, S., et al. (2020). Medically assisted gender affirmation: when children and parents disagree *Journal of Medical Ethics*,46: 295-299.

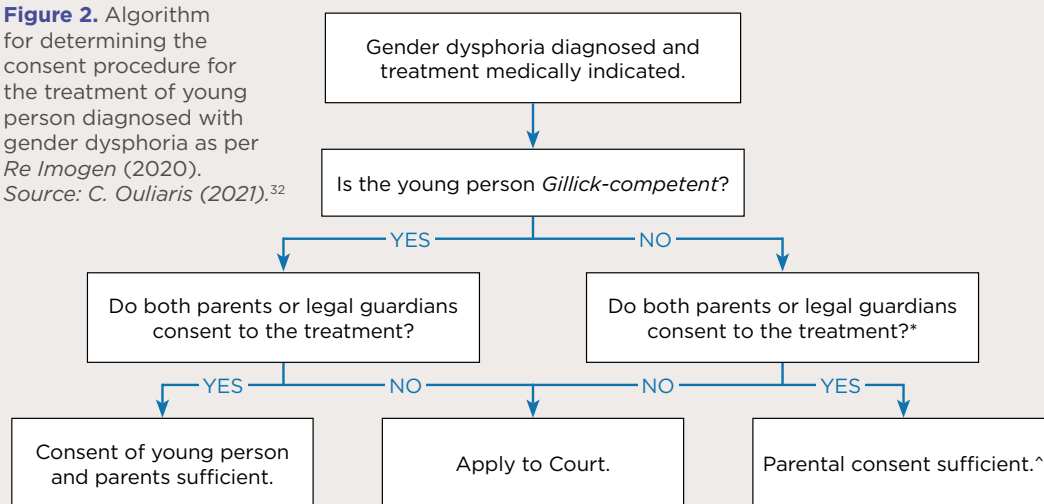
decided by a single Judge of the Family Court in 2020, known as *Re Imogen* (No 6) [2020] FamCA 761 have set back the legal rights of trans young people significantly, to the extent that those trans youth who have an absent parent, or a parent who objects, now face significant hurdles and delays by being required to go through the court process to obtain court authorisation, even if they are deemed '*Gillick*-competent' and treatment is determined to be in their best interest (**Figure 2**).<sup>30</sup> No other form of therapeutic medical treatment is subjected to those hurdles, which gives the application of *Re Imogen* discriminatory impact.

*In the face of increasing numbers of young people identifying as gender diverse, and demanding treatment services, it is time that the legislature took responsibility for developing a sensitive, humane, and practical system for decision making around their access to potentially life-saving medical treatment.*<sup>31</sup>  
– Hon Justice Steven Strickland, Judge of the Appeal Division, Family Court of Australia and President, Australian Chapter of the Association of Family and Conciliation Courts.

Reform is urgently required to reverse inequity. Furthermore, while family support organisations play a key role in early intervention, including provision of support



**Figure 2.** Algorithm for determining the consent procedure for the treatment of young person diagnosed with gender dysphoria as per *Re Imogen* (2020). Source: C. Ouliaris (2021).<sup>32</sup>



and information to families which can avoid unnecessary court applications, funding for family support organisations is insufficient.

### International cases of best practice

My Churchill Fellowship<sup>33</sup> explored best practice models of trans health care and the importance of respecting and valuing people of lived experience and affirming them at every level – socially, culturally, medically, surgically, and legally. I visited the United Kingdom, Thailand, Germany, Canada, and the United States. Recent legal cases in Canada (**case study 1**) and the United Kingdom (**case study 2**) demonstrate the importance of enabling lifesaving gender affirming care for trans young people, recognising that *Gillick*-competent trans young people under the age of sixteen can provide informed consent to medical treatment.

### Supporting families into the future

The role of families in achieving lasting, lifelong, positive outcomes for transgender children is critical.<sup>34</sup> Families need support to help navigate the difficult pathway to locating and accessing the limited number of professionals and services presently available in Australia. Without appropriate integrated care and family support in place by services such as Transcend Australia (national) or the Gender Centre (NSW), access to gender affirming care can be jeopardised. Moreover, the Family Court’s current requirement for dual parental or legal guardian consent has the effect of delaying or denying access to treatment. Increasing funding to family support organisations to scale up these services nationally may serve to mitigate this risk, providing immense benefit to families and trans young people’s long term outcomes.

The Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents, published by The Royal Children’s Hospital,<sup>35</sup> have been heralded as world leading by the prestigious medical journal *The Lancet* and were endorsed by AusPATH, the peak body for professionals working with trans people in Australia. Yet the current inconsistent application of the law in Australia relating to *Gillick*-competence hinders the ability for that

#### Case study 1: Canada – AB v CD and EF (2019)

In 2019, a transgender youth (AB) sought gender-affirming medical treatment at age thirteen. The consulting endocrinologist recommended stage 1 treatment to suppress puberty. The young person’s father (CD) disagreed, and the parties went to court – AB seeking to retain their right to consent to medical treatment and the father seeking to prevent it.<sup>36</sup> The law stipulated that:

*‘if a minor understands a proposed treatment and its consequences, and the minor’s medical provider finds the minor competent and the treatment to be in the best interest of the minor, the minor has the exclusive right to consent to the treatment. The court found in favour of AB as having exclusive right to consent and dismissed the father’s claim. On appeal, the Court upheld the original decision.’<sup>36</sup>*

### Case study 2: United Kingdom

In 2021, the England and Wales Court of Appeal overturned the London High Court decision in the case of *Bell vs Tavistock*. The judges in *Bell v Tavistock* doubted that anyone under the age of 16 would be able to provide informed consent to starting puberty blockers as a gender affirming medical intervention and must instead apply to the court for permission.<sup>37</sup> This decision effectively reversed an earlier decision (*Gillick v. West Norfolk and Wisbech Health Authority*) which had provided a mechanism for minors to consent to their own medical treatment if judged by the treating medical practitioner to be competent to do so. This had the effect of limiting the application of *Gillick* solely in cases involving gender affirming care.

The Court of Appeal, however, found against the decision in *Bell v Tavistock* and 'reinstated the test of *Gillick* and re-emphasised that it is for the clinician together with the patient and the family to make decisions on a case-by-case basis. It was not for the court to make generalisations about consent at different ages, nor should the court be routinely part of the consent process for puberty blockers.'<sup>38</sup>

high quality care to be delivered. To support families and young trans people into the future, Australia must not ignore the current crisis of care experienced by trans young people. Urgent action is needed to scale up family support services for this vulnerable and underserved part of the Australian community and to draft legislation so that trans young people can access medical treatment on the same terms as non-trans children and in a timely manner.

### Recommendations

**1. Australian, state, and territory governments provide appropriate funding to community led trans family support organisations to meet the growing demand of families requiring assistance.**

This will enable early intervention, support and appropriate referral through dedicated case work and peer support to families of trans young people and help to create a better pathway for timely access to care, avoid unnecessary court applications, and reduce long term public health costs associated with poor mental health.

**2. State and territory governments appropriately fund multi-disciplinary gender services for young people.**

Ensuring timely access to gender affirming health care requires adequate funding and appropriately trained staff. Trans young people deserve access to quality and timely gender affirming health care close to where they live, including in regional and rural areas.

**3. The Australian Department of Health ensures that trans young people and their families are meaningfully included as priority groups in health and wellbeing strategies and hosts a national roundtable**

**meeting of trans and family led organisations to identify the key issues impacting communities, including:**

- workforce gaps, training, and capacity building needs for generalist and specialist practitioners
- accessibility issues related to gender affirming medications that are not listed on the Pharmaceutical Benefits Scheme
- the needs of communities in regional and rural Australia
- review of Medicare item numbers to comprehensively assess trans youth for medical interventions and item numbers for specific surgical gender affirming procedures
- access to gender affirming surgery in the public health sector
- national data collection and outcome monitoring to analyse productivity
- fund research to build an evidence base
- develop evidence-based facts sheets.

**4. Change the law to stop medical consent discrimination for trans young people.**

Legislation is required to codify *Gillick-competence* so that trans young people are afforded the same medical consent rights as non-trans young people in Australia. The standard model of care should respect the medical decision-making rights of the young person in a manner which is consistent with the common law principles of *Gillick-competence*, preferably through legislative reform, to ensure that trans young people can consent to health care on the same terms as non-trans young people, in a timely manner and in a way that recognises their inherent dignity and human rights to health care and equal treatment by the law, without discrimination.

## Stakeholder consultation

Thank you to all the stakeholders for their engagement and contribution to this article, and to the following organisations who consented to be listed. This list is not exhaustive and I would recommend policy makers engage with experts in the field who have credible academic, clinical or lived experience.

Transcend Australia, Health Law Partners, Australian Professional Association for Trans Health, Suicide Prevention Australia, Academy of Child and Adolescent Health, Australian Association for Adolescent Health, Telethon Kids Institute, A Gender Agenda, Equality Australia, Twenty10, TransFolk of WA, Transgender Victoria, Zoe Belle Gender Collective, Youth Affairs Council of Victoria, Foundation for Young Australians, Gender Centre, LGBTIQ+ Health Australia, ACON, The Gender Centre, Murdoch Children's Research Institute, and TransFamily.

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*Jeremy Wiggins is CEO of Transcend Australia, a national charity working to support families and their transgender children. Jeremy has worked for over 15 years on health system reform and innovation to improve health outcomes for marginalised communities.*

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