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**CONSENT BY YOUNG PEOPLE TO MEDICAL
TREATMENT**

Miscellaneous Paper No 2

Queensland Law Reform Commission
May 1993

QUEENSLAND LAW REFORM COMMISSION

Consent by Young People to Medical Treatment

INFORMATION PAPER

May 1993

1. The Enquiry and Call for Submissions

The Queensland Law Reform Commission has commenced work on an enquiry into the law and practice in Queensland relating to consent to medical procedures on people under the age of 18. This paper has been produced to provide further information to interested people on the issues the Commission envisages will need to be addressed during the course of this enquiry and to assist people in making submissions. It does not purport to represent the final views of the Commission, nor should it be taken to limit public input to the issues identified in the Paper. The public is invited to raise other issues which it considers relevant to the enquiry.

At the end of the enquiry the Commission will be reporting to the Attorney-General on what it considers to be the most appropriate reforms, if any, to the existing law. In order to make appropriate recommendations the Commission needs significant input from members of the public, professionals and organisations who have an interest or expertise in this area. The Commission invites oral and written submissions which may help the Commission identify concerns or injustices resulting from the current law and alternative methods of addressing such concerns or injustices.

If you would like your submission to be treated as confidential, please indicate this clearly (for example, by marking your written submission "confidential"). However, submissions may be subject to release under the Freedom of Information Act 1992.

Written or oral submissions should be received by 15 June 1993.

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2. The Existing Law in Queensland

There is no statute law in Queensland regulating at what age or under what circumstances a person who is not an adult can consent or refuse to consent to medical treatment, nor is there comprehensive statute law stipulating under what circumstances another person or body is able to consent, or refuse to consent, to the medical treatment of a young person. What law there is, is to be found in the common law (case law).

(a) Medical Treatment without Consent

Any voluntary touching of another person is generally unlawful unless the other person has consented to that touching. Without consent, even the slightest degree of physical contact may give rise to a civil claim (eg for assault) or to a criminal assault charge. This general rule, subject to the exceptions referred to below, applies to health-care providers as it does to other members of the public.

Provided it is a "real" consent (that is, a consent not obtained by fraud or by misrepresentation as to the nature of the procedure and where the patient has been informed in broad terms of the nature of the proposed procedure before giving consent), doctors and other health-care providers are generally immune from liability for criminal assault and assault under the civil law. Under the criminal law, a person can consent to what would otherwise be a simple assault but cannot consent to more serious injuries such as wounding being done to that person by another. However, a doctor would not be criminally liable for grievous bodily harm (eg removal of an organ or the amputation of a limb) if the procedure was for the patient's benefit and was reasonable "having regard to the patient's state at the time and to all the circumstances" (Criminal Code section 282). The "real" consent of a person to the touching by another, relieves the other from civil liability even though the other may be criminally liable for his or her actions.

The requirement of consent is intended to ensure protection for the patient against unauthorised interference with his or her right to bodily integrity and, for the health-care provider, against possible legal action.

There are certain statutory exceptions to a health-care provider's liability for treating a patient without his or her consent - for example, when the procedure is to be performed on a person in an emergency situation in circumstances where the person is unable to consent (s.52 *Medical Act 1939*).

(b) Medical Treatment of Young People

The age of majority in Queensland is 18. Upon attaining that age young people are adults and, if they are not otherwise disabled from doing so, have the capacity to consent to or refuse any medical treatment to be performed upon them.

Young people have the capacity, at law, to consent to, or participate in, a number of things that competent adults would be able to do in similar circumstances. At

17 years of age, young people can be issued driver's licences. At any age a person can enter into a legally enforceable contract for "necessaries of life" (eg food and shelter). Young people are responsible for damages resulting from wrongs committed against others (torts). At age 16 young people can be issued a Medicare card in their own name. At the age of 10 young people may have the capacity to commit (and to be liable to be punished for) offences against State law and, subject to any necessary authorisation, a person of 16 years can marry.

However, the law is not as clear in relation to the civil and criminal liability of health care practitioners treating young people without the consent of parents or guardians. There is no fixed age under the age of majority at which a young person automatically attains the capacity to consent to medical treatment in his or her own right.

Parents or guardians of young people may generally assume that they are the only ones who can consent to or refuse treatment on behalf of their sons or daughters until their children attain their majority. However, there has never been a rigid rule at common law that a person who has not attained his or her majority can never give a valid consent to medical treatment. Traditionally, young people who are capable of appreciating fully the nature and consequences of a particular operation or a particular treatment have been capable of giving 'real' consent. Nevertheless, there is uncertainty about whether young people can consent to medical treatment in all circumstances.

In the United Kingdom House of Lords case of *Gillick v West Norfolk* [1986] AC 112 (*Gillick's case*) it was held that parental power to consent to medical treatment on behalf of a son or daughter diminishes gradually as the child's capacities and maturity grow and that this rate of development depends on the individual child. Parental powers are derived from the parental duty and exist only so long as they are needed for the child's benefit and protection. The extent and duration of the parental power can not be ascertained by reference to a fixed age but depends upon the degree of intelligence and understanding of the child and a judgment of what is best for his or her welfare. Although in the majority of cases parents are the best judges of matters concerning the welfare of their son or daughter, there might be exceptional cases in which a doctor is a better judge of the medical advice and treatment which is in the child's best interests and can proceed to give the advice or treatment without the consent or knowledge of the parents (i.e. the doctor makes the decision to treat and not the parents). The parents' right to determine when a child should have medical treatment terminates when the child achieves sufficient intelligence and understanding to enable him or her to comprehend fully what is proposed. In such a case the child is able to make the treatment decision by himself or herself.

The High Court of Australia in *Secretary Department of Health and Community Services v JWB and SMB* (1992) 175 C.L.R. 218 (*Marion's case*) said that the law as stated in *Gillick's case* reflects the common law in Australia. The position in Queensland is also affected by a number of statutory provisions.

The existing law can be summarised as follows:

- (i) If the medical treatment is properly understood by the young person, the young person has the same capacity to consent as an adult.
- (ii) Where a young person is incapable of giving effective consent to medical treatment, parents or guardians may, in a whole range of circumstances, consent to the medical treatment of their son or daughter;
- (iii) Where the parental power to consent exists the consent of a parent is ordinarily indispensable. However, parental consent is limited by the overriding criterion of the young person's best interests, and it is beyond the power of a parent to give or refuse consent to medical treatment where to do so is against the best interests of the young person. Save only in exceptional cases what is in the child's best interests is ordinarily left to the parents to decide.
- (iv) Intellectually disabled young people may be capable of consenting to medical treatment although the age at which intellectually disabled young people can consent will generally be higher than for young people within a normal range of abilities, and will depend upon the nature and extent of the intellectual disability and the nature of the treatment.
- (v) If the principal purpose or major aim of the treatment is non-therapeutic and the intellectually disabled young person is unable to consent, the consent of a court will be required if the nature of the medical treatment is invasive, irreversible and major surgery and involves such a violation of the fundamental right to personal inviolability as to fall outside the ordinary scope of parental powers eg. sterilisation of a minor. Consent to such medical treatment will not be given by the Court unless it is necessary and in the young person's best interests.

3. The Law and Proposals for Reform in Other Jurisdictions

In a number of Australian and overseas jurisdictions statutory provisions have been introduced in an attempt to clarify the law relating to consent to medical treatment of young people. Law reform commissions and other advisory agencies have also made recommendations for change. A comparison of some of the various statutory provisions and recommendations for reform is included in Appendices 1 and 2 of this Paper.

In some jurisdictions legislation has confirmed that young people 16 years and over are able to consent to any medical treatment without the approval or

involvement of parents. Statutes have also been enacted to provide that young people of any age can so consent if their medical practitioner believes that the young person is mature enough to understand the nature and consequences of the treatment - in some cases, only if one other medical practitioner agrees with that assessment - in other cases, only if the medical practitioner(s) also considers that such treatment is in the best interests of the health and well-being of the young person.

The Commission will consider:

- * **whether there should be a fixed age for young people (under the age of 18) at which they are able to consent to any (or limited) medical treatment?**
- * **whether a young person of any age who understands the nature and consequences of proposed medical treatment should be able to consent to that medical treatment (the current common law position)? Should the common law position be enacted in legislation?**
- * **what other criteria, if any, should determine a young person's capacity to consent to medical treatment?**

4. Practical Problems with the Existing Law in Queensland

(a) Medical Treatment of Young People Generally

Health-care providers, parents and young people may find themselves in a situation in which some or all are unsure of their rights and responsibilities relating to the medical treatment of young people.

Health-care providers may be hesitant to treat a young person without first obtaining the consent of the young person's parents or guardian. If the health-care provider knows of the *Gillick* test and of its application in Australia he or she may nevertheless still hesitate to treat a young person on the basis only of the young person's consent. This is more likely to be the case when the health-care provider has any doubt about the ability of the young person to understand the nature and consequences of the proposed treatment. If the health-care provider proceeds with the treatment without seeking the parents' or guardian's consent in such circumstances, he or she may find himself or herself civilly or even criminally liable for the wrongful touching of the young patient.

The Commission will consider:

- * **whether doctors and other health-care providers should be immune from criminal prosecution and civil liability for assault based upon the young person's lack of capacity to consent if the doctor or other health-care provider believed on reasonable grounds that the young person was mature enough to understand the nature and consequences of the proposed treatment?**
- * **whether a doctor should be able to commence, continue with, or refuse to perform, medical treatment on the young person if he or she believes that to be in the best interests of the young person?**

If the health-care provider contacts the young person's parents against the wishes of the young person he or she may very well lose the confidence of the young person - and, of course, treatment that would have been in the best interests of the young person may be prevented by the parents' insistence that the treatment not proceed. Proposed treatment that may not have been in the young person's best interests might also be prevented by the parents in such circumstances.

The Commission will consider:

- * **whether the rules relating to confidentiality of the health-care provider-patient relationship should apply to the provision of health-care sought by a young person - whether or not the young person had the capacity to consent to medical treatment?**
- * **whether and under what circumstances a health-care provider should be entitled to breach such confidentiality?**

Parents may be particularly concerned by the prospect of their son or daughter being able to seek and obtain medical advice and treatment without their knowledge or approval. Parents are responsible for the vast majority of decisions affecting their children's health and well-being from birth to maturity and, some would say, to their majority. The younger a son or daughter is, the less likely would parents be willing to be kept in the dark concerning the medical treatment of their child. This may be particularly so the more **serious** the medical advice or treatment. Many parents would want to know if, and to have some say in whether or not, their son or daughter were to receive contraception advice, drug or alcohol abuse or psychiatric counselling or to undergo a procedure resulting in the termination of a pregnancy, etcetera. Parents may be less concerned about their children being treated, without the parents' knowledge or consent, for a cold or for a minor school yard injury.

(b) Contraception and Sexually Transmitted Diseases

Although there may be no criminal or civil impediment to a health-care provider advising, prescribing and treating a mature young person in relation to contraception, many parents may wish to control their children's sexual behaviour and access to treatment and advice in relation to their sexuality. However, many young people may not wish to involve their parents or guardians in decision-making as to their sexuality and would prefer to approach a health-care provider for advice or treatment with the assurance that confidentiality will be maintained.

Some health-care providers may be reluctant, due to the uncertainty of the law, or to some moral or ethical belief, to advise or treat young people on sexuality matters, without the approval or involvement of the parents. As a result of such reluctance on the part of health-care providers, a young person may commence or continue to be sexually active without taking adequate precautions against pregnancy or disease.

The emotional, social and economic consequences to the young person of having an unplanned baby or contracting a sexually transmitted disease may be drastic. The non-use of contraceptives or the failure to seek treatment for diseases may be a result of a fear of parents being informed about their child's sexual behaviour. On the other hand, parents may see great advantages in controlling their son or daughter's access to medical treatment and advice on sexual matters.

The Commission will consider:

- * **whether contraception and sexually transmitted disease advice and treatment are forms of medical treatment which young people over a particular age can consent to without the knowledge or approval of parents?**
- * **whether young people of any age should be able to seek such treatment without the knowledge or approval of parents? or**
- * **whether these forms of treatment should not be within the ability of people below a particular age to undergo without the consent of parents or others?**
- * **whether a young person who is a parent should be able to consent to medical treatment of his or her child as if the young person were an adult?**

(c) Lawful Termination of Pregnancy

Whether or not a young person, or others on her behalf, is able to consent to a lawful termination of the young person's pregnancy, will raise similar arguments to those raised in the discussion on contraception and sexually transmitted diseases advice and treatment - particularly in relation to the ability of a young person to consent to a termination (if, apart from the young person's age, that were legally possible) without the knowledge or support of parents. There will also be the concern that if parents are not informed of the lawful termination then the young person may be deprived of emotional and psychological support that only the parents would be able to provide.

The Commission will consider:

- * **whether lawful termination of pregnancy is a form of medical treatment which a young person over a particular age can consent to without the knowledge or approval of parents?**
- * **whether a young person of any age should be able to seek a lawful termination of her pregnancy without the knowledge or approval of parents? or**
- * **whether lawful termination of pregnancy should not be within the ability of people below a particular age to undergo without the consent of parents or others?**

(d) Psychiatric and Psychological Counselling

Adolescence is a particularly stressful time for many young people and a time when people may exhibit emotional and behavioural problems. Drug and alcohol abuse, depression, eating disorders (e.g. anorexia nervosa), suicidal thoughts, confusion or anxieties about sexuality matters are not uncommon among young people, particularly in their adolescent years. Professional assistance and guidance during these times may be preferable to, or at least a valuable addition to, parental support for those young people who are unable to approach their parents for assistance, even where there is a healthy relationship between them. It may be vital for their mental and physical health for them to be able to approach appropriate professionals confident in the knowledge that they will be entering a confidential professional relationship.

Under the current law, doctors and other health-care providers may be reluctant to advise or treat young people in these types of matters without the involvement or consent of the young person's parents. Such reluctance may be due to the fear of criminal or civil liability for treating a young person without 'real' consent or for treating a young person where there is any doubt about his or her ability to understand the nature and consequences of the treatment.

The Commission will consider:

- * whether counselling and other treatments for emotional or behavioural problems are forms of medical treatment which young people over a particular age can consent to without the knowledge or approval of parents?
- * whether young people of any age should be able to seek such treatment without the knowledge or approval of parents?
- * whether such treatment should not be within the ability of people below a particular age to undergo without the consent of parents or others?

(e) Non-therapeutic Procedures Sought to be Performed on Young People by Others

For religious, cultural or cosmetic reasons parents or guardians may seek to have the young people in their care undergo surgical or medical procedures to which the young person is unable because of age or immaturity to consent or refuse. For example, babies or young boys may be circumcised for other than therapeutic reasons. Similarly, clitoridectomies or female circumcision might be performed for purely religious reasons on a young person who is unable to consent on her own behalf. Other non-therapeutic procedures might be sought to be performed on a young person for a variety of reasons not necessarily in the best interests of the health and well-being of the young person.

The Commission will consider:

- * whether there are any forms of medical treatment which parents or guardians should not be able to consent to in relation to young people?
- * whether the approval of a court or other body should be obtained before such procedures could be performed?

(f) Unorthodox Treatment

The Commission will consider:

- * whether there are any forms of treatment, not recognised by established medical opinion (such as experimental treatment of malignancies), which parents or guardians should not be able to subject their children to and/or to which young people should be prohibited from giving 'real' consent?
- * whether young people above a particular age should be able to consent to any treatment to which an adult could consent, whether or not it is orthodox medical treatment?

(g) Special Medical Procedures

The Commission will consider:

- * whether there are certain types of treatment with serious effects to which a young person and/or his or her parents or guardians should not be able to consent, or in relation to which special considerations might apply? For example: sex change or re-alignment; tissue donation; sterilisation (see (j) below in relation to sterilisation of young people with intellectual disabilities); shock therapy, psychotherapy etc.

(h) Child abuse and medical examinations

Invariably as a result of an allegation that a young person has been physically and/or sexually abused, it will be necessary for a medical practitioner to physically examine the young person for evidence of sexual or other interference. A young person might be reluctant to undergo such an examination or be too young to consent. Depending upon the circumstances involved in the case, it might also be inappropriate to approach the parents or guardian for their consent to examine the young person.

The Commission will consider:

- * whether there are circumstances in which a medical examination of a young person can be conducted: against the objections of the young person; in the absence of parental consent; or, in circumstances under which parental consent would be inappropriate?
- * whether procedures should be established or immunities spelt out to enable examinations in such circumstances to take place?
- * whether a young person in such circumstances should always be accompanied or represented by an independent third party?

(i) Refusal of Treatment

Assuming young people above a particular age or of a particular level of maturity can or should be able to consent to medical treatment, it follows that such young people should also be able to refuse such treatment. However, if a young person is not able to consent, should he or she nevertheless be able to refuse treatment sought by others?

The Commission will consider:

- * whether young people should be able to refuse to undergo treatment sought by others and, if so, at what age or level of maturity?
- * should a young person be able to refuse treatment whether or not the proposed treatment is in his or her best interests?

(j) Medical Treatment of Young People unable to Consent due to Intellectual Disability

Young people with intellectual disabilities may have the capacity to consent to certain medical treatment but not to others. Their capacity in any particular case will depend upon the *Gillick* test - that is, whether or not they understand the nature and consequences of the proposed treatment.

Young people with intellectual disability may require medical treatment for conditions in relation to which other young people would not require medical intervention. One such type of intervention is non-therapeutic sterilisation in response, for example, to menstrual management problems. The High Court in *Marion's* case held that because of the significant risk of making a wrong decision on whether to authorise the sterilisation of an intellectually disabled young person for non-therapeutic purposes (such as for menstrual management or for fertility control), and because of the grave consequences that would result from a wrong decision, the power to authorise sterilisation for non-therapeutic purposes does not

lie with the young person's parents or guardians. Court authorisation is required. The High Court confirmed that the Family Court would have authority to hear such cases. The decision to perform a sterilisation procedure for therapeutic purposes (e.g. to preserve life or cure a disease or correct a bodily malfunction) would still be within the power of the parent or guardian to consent to. A Court could always be approached to authorise the therapeutic sterilisation of a young person over the objection of parents, pursuant to the Court's inherent *parens patriae* jurisdiction (ie. the Court has an inherent jurisdiction to do what is for the benefit of those who are unable to take care of themselves.).

The High Court also indicated that the court may not be the most appropriate body to decide such matters and urged the States to address the matter of the most appropriate forum. In South Australia and New South Wales, legislation had already been enacted to enable their respective Guardianship Boards (and, in New South Wales, the Supreme Court) to authorise sterilisation, where appropriate. In a separate project, the Commission is developing recommendations for the establishment of a Tribunal in Queensland to assist adults with intellectual disabilities in making medical and other decisions. If such a Tribunal existed in Queensland, it may be the most appropriate forum to authorise medical treatment of incapacitated young people.

The High Court in *Marion's* case confirmed that medical treatment of incapacitated young people cannot be consented to, or authorised, unless it is in their best interests. The Court did not, however, delineate all procedures in addition to non-therapeutic sterilisation for which a Court authorisation is required.

The High Court made it clear that the parents or guardians of a young person have full power to authorise non-therapeutic procedures such as cosmetic surgery on a young person - even though the procedures may be irreversible and major so long as the procedures are in the best interests of the young person. However; if the procedure requires invasive, irreversible and major surgery, if there is a significant risk of making the wrong decision either as to a young person's present or future capacity to consent or about what are the best interests of a young person who cannot consent, and if the consequences of a wrong decision would be particularly grave - then Court authorisation is most likely required.

The Commission will consider:

- * whether Queensland should legislate in response to *Marion's* case to make it clear under what circumstances parents or guardians can consent to the non-therapeutic treatment (and what treatment) of their intellectually disabled sons and daughters?
- * what would be the most appropriate substitute decision-making body in relation to the treatment of intellectually disabled young people (for example, a court, a tribunal, parents, etc)?
- * whether young people unable to consent to their own treatment due to an intellectual disability should nevertheless be able to refuse to undergo treatment (whether or not considered to be in the young person's best interests)?

5. Possible Reforms

Some possible reforms include:

- (a) Young people 16 years of age or over to be treated as adults for the purpose of consent or refusal of consent to medical treatment.
- (b) Young people of any age under 16 years of age to be able to consent to medical treatment provided the health-care provider proposing the treatment and one other health-care provider practising in the same field agree that the young person understands the nature and consequences of the proposed treatment and that the proposed treatment is in the best interests of the young person's health and well-being.
- (c) Young people who are able to consent to their own medical treatment to be entitled to the same degree of confidentiality with health-care providers as an adult would have in similar circumstances.
- (d) No health-care provider to be criminally responsible or civilly liable for assault, for treating a young person in the manner referred to in (a) and (b) above despite the absence of parental consent.
- (e) Parents or guardians of young people under 16 to be able to consent to medical treatment of the young person if the treatment is in the best interests of the young person and if the young person does not have the capacity to consent or does not wish to exercise his or her right to consent.
- (f) No young person under the age of 16 nor any other individual to be able to consent to the non-therapeutic sterilisation of the young person. A Tribunal can consent to non-therapeutic sterilisation only if in the best interests of the young person and only if no other treatment or procedure can address the young person's problem.

- (g) Young people of any age to be able to refuse to undergo any non-therapeutic treatment. (Whether or not in the young person's best interests?)
- (h) No person or body to be able to consent to the non-therapeutic treatment of a young person if such treatment is not in the best interests of the health and well-being of the young person.
- (i) Except in relation to sterilisation (and perhaps some other procedures), decisions relating to non-therapeutic treatment of young people under the age of 16 to be made by -
 - (i) the young person, if (b), above, applies.
 - (ii) the parents/guardian of the young person, if (e), above, applies.
 - (iii) a Tribunal if (i) does not apply and parents/guardians unable or not willing to decide.

APPENDIX 1 - JURISDICTIONS WITH LEGISLATION OR PROPOSALS FOR REFORM IN RELATION TO CONSENT TO MEDICAL TREATMENT OF YOUNG PEOPLE (Y.P.)

Age at which Y.P. considered to be adult for purpose of consenting to medical treatment.

South Australia ¹	New South Wales	Western Australia ²	New Zealand ³	United Kingdom ⁴
16 (C to MDP Act s.6)		16 - although parents' entitlement to consent preserved if Y.P.'s consent cannot be given e.g. if unconscious. Possible exceptions include sterilisation, ECT, psychotherapy etc. (WA para 5.15)	16 - if for Y.P.'s benefit or any age if is or has been married (N.Z. s.25) or any age for consent or refusal of consent to abortion. (N.Z. s.25A)	16. (UK s.8)
Saskatchewan ⁵	Alberta ⁷	Quebec ⁸	British Columbia ⁹	Uniform Law Conference ¹⁰
	16 or apparently 16 (Alberta App.E cl.2) or any age re: any communicable disease, drug or alcohol abuse, contraception, pregnancy, abortion. (Alberta App.E cl.3)	14, but if Y.P. sheltered for more than 12 hours or if "extended treatment" is proposed, parents to be informed. (Quebec s.35)	16 but reasonable effort to be made to obtain consent of parent/guardian or written opinion from another doctor or dentist confirming treatment is in best interest of the continued health and well-being of Y.P. (B.C. s.23)	16. (M.C.M. s.1)

¹ Consent to Medical Treatment and Dental Procedures Act 1985 (C to MDP Act)
Mental Health Amendment Act 1985 (MHA Act)

² Minors (Property and Contracts) Act 1970 (M(P & C))
Children (Care and Protection) Act 1987 (C(C & P))
Disability Services and Guardianship Act 1987 (DS & G)

³ Law Reform Commission of W.A. Discussion Paper on Medical Treatment for Minors 1988 (WA)
Guardianship Act 1968 (NZ)

⁴ Family Law Reform Act 1969

⁵ Saskatchewan Law Reform Commission Report on Proposals for a Consent of Minors and Health Care Act 1980 (Sask)

⁶ Institute of Law Research and Reform Report on Consent of Minors to Health Care, 1975 (Alberta)

⁷ Public Health Protection Act 1972 (Quebec)

⁸ Infants Act 1960 (B.C.)

⁹ Medical Consent of Minors Act (M.C.M.) Canada.

¹⁰

Maturity test -statute

South Australia	New South Wales	Western Australia	New Zealand	United Kingdom
Y.P. can consent at <u>any age</u> if doctor or dentist (plus written opinion of another doctor or dentist) verify Y.P. capable of understanding nature and consequence of procedure and procedure in best interests of Y.P.'s health and well-being (C to MDP s.6)		Y.P. can consent at <u>any age</u> if mature. For purposes of assessing maturity: (a) Y.P. between 13 and 16 to be regarded as presumptively mature, and (b) Y.P. under 13 to be regarded as potentially mature but whose maturity must be established to satisfaction of doctor. (WA para 5.9)		
Saskatchewan	Alberta	Quebec	British Columbia	Uniform Law Conference
Y.P. can consent at any age if he/she has capacity to understand and appreciate nature and consequences of proposed health care. Procedure for obtaining judicial determination of maturity. (Sask P.12)				Y.P. can consent at any age if, in opinion of doctor or dentist supported by written opinion of another doctor or dentist; (a) Y.P. is capable of understand nature and consequences of treatment; and (b) treatment and procedure is in best interests of the Y.P. and his/her continuing health and well-being. (M.C.M. s.3)

Protection from criminal/civil liability

South Australia	New South Wales	Western Australia	New Zealand	United Kingdom
<p>No criminal or civil liability re: med. procedures on person (c/ full age or deemed by s.6 C to MDP Act to be of full age) with person's consent if "procedure is reasonably appropriate in the circumstances" and "the procedure is carried out in good faith and without negligence" (C to MDP s.8)</p>	<p>Doctors/dentists protected from actions for assault or battery re: medical or dental treatment of Y.P. under 16, when parents/guardians have consented to such treatment, as if at time consent given Y.P. were an adult.</p> <p>Also protected re: treatment of Y.P. 14 or older where Y.P. has consented - as if the consent given when Y.P. were an adult (M(P & C) s.49)</p>	<p>No criminal or civil liability based on Y.P.'s lack of capacity to consent where immature Y.P. consents without consent of parents, if;</p> <p>(a) doctor reasonably believed Y.P. to be mature, or</p> <p>(b) treatment necessary to deal with serious threat to life or health of Y.P. (WA para 5.21)</p>		
Saskatchewan	Alberta	Quebec	British Columbia	Uniform Law Conference

Y.P. with children

South Australia	New South Wales	Western Australia	New Zealand	United Kingdom
Saskatchewan	Alberta	Quebec	British Columbia	Uniform Law Conference
A Y.P. who is capable of consenting to his/her own health care is capable of consenting to health care of any child in his/her custody (Sask p.13)	A Y.P. who has borne a child may consent to health care for herself and her child. (Alberta App.E cl.4)			

Preservation of confidentiality

South Australia	New South Wales	Western Australia	New Zealand	United Kingdom
		<p>If Y.P. sufficiently mature to consent and to comprehend the advice which is necessary before the consent can be real. The duty to maintain a confidence should not be broken in circumstances other than those presently permitted by the law with respect to an adult patient. (WA para 8.13)</p>		
Saskatchewan	Alberta	Quebec	British Columbia	Uniform Law Conference
	<p>Where Y.P. has consented to health care pursuant to the Act, doctor - patient confidentiality shall apply. (Alberta App.E cl.7)</p>			

APPENDIX 2

**CONSENT TO MEDICAL TREATMENT OF YOUNG PEOPLE (Y.P.) - AUSTRALIAN
STATUTORY PROVISIONS¹**

	New South Wales	South Australia	Northern Territory ²
Y.P. under 16	<p><u>Ordinary med. and dent. treatment</u> of Y.P. in the care of the State - the consent of the appropriate person. (C(C & P s.20)</p> <p><u>Special medical treatment:</u>³ doctor can perform without consent if of opinion it is necessary as a matter of urgency to carry out the treatment in order to save the Y.P.'s life or to prevent serious damage to the Y.P.'s health (C(C & P) s.20B)</p> <p>- Supreme Court can consent, provided satisfied that it is necessary in order to save the Y.P.'s life or to prevent serious damage to the Y.P.'s health. (C(C & P)s.20B)</p>	<p><u>Any medical or dental procedure</u> -</p> <p>the consent of the Y.P. is sufficient if med. prac./dentist is of opinion that the Y.P. is mature and that the procedure is in the best interests of the Y.P.'s health and well being (and if practicable, supported by written opinion of one other med. prac./dentist) (C to M & DP s.6)</p>	<p><u>Abortion:-</u></p> <p>Consent of parents/guardians necessary before termination of pregnancy can be carried out.</p>
Y.P. 16 and over	-	<p><u>Any medical or dental procedure</u> -</p> <p>the consent of the Y.P. is sufficient (C to M&DP s.6)</p>	
Y.P. under 16 intellectually disabled from consenting	As above (i.e. whether or not Y.P. is intellectually disabled).		

¹ Except general provisions relating to treatment in emergency situations - all jurisdictions have such provisions. Refer to Appendix 1 for abbreviations of statutes.

² Criminal Code (N.T.) s.174(4)(b).

³ Sterilisation procedures; administration of drugs of addiction under certain circumstances; certain experimental proceedings; administration of long-acting injectable hormonal substances for the purpose of contraception or menstrual regulation; vasectomies; tubal ligations (s20B(3) C(C&P) and Regulations).

<p>Y.P. 16 and over intellectually disabled from consenting</p>	<p><u>Special medical treatment:</u>⁴ - doctor can perform without consent if of opinion is necessary as a matter of urgency, to carry out the treatment in order to save the parent's life or to prevent serious damage to the person's health (D S & G s.36)</p>	<p><u>Any medical or dental procedure including sterilisation and abortion:-</u> the consent of the Board whether or not the person is a "protected person." (MHA s28B(2))</p>	
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⁴ As per foot note 2 above (s.33 and Regulations)