

Question on Notice

No. 1057

Asked on 14 September 2021

MR S ANDREW ASKED THE MINISTER FOR HEALTH AND AMBULANCE SERVICES (HON Y D'ATH)—

QUESTION

With reference to current policy in Queensland regarding consent by children to vaccines—

Will the Minister advise (a) what is the current the policy for determining whether a child (rather than parent or guardian) can consent to a vaccination, (b) does the policy set an age at which a child is presumed to be expected to have sufficient maturity, intelligence and understanding to be able to provide consent (c) what guidelines are in place to ensure a 'medical provider' can determine that a child over 12 is 'capable' of providing 'informed consent' for a medical treatment that is provisionally approved and (d) does the government under policy accept liability for any injuries or deaths that may result from the administration of a vaccine to a child between the ages of 12 and 17, where parental consent was not obtained?

ANSWER

With respect to the Member's questions, I have been advised as follows:

A: Current policy

The receipt of a vaccine is a type of medical treatment. Queensland Health applies principles under legislation and common law in conjunction with relevant resources which include the *'Guide to Informed Decision-making in Health Care'*.

In Queensland, a child or young person who is under the age of 18 years, can consent to a vaccination if they have the requisite capacity to consent.

The authority of parents to consent on behalf of a child or young person is not absolute. Their parental responsibility decreases as the young person matures until it ceases to exist when the child reaches 18 years of age. As a result of this there may be times when both someone with parental responsibility and the child, or young person, simultaneously can provide consent to health care.

As Queensland does not have specific legislation which addresses the issue of a child's capacity to consent to medical treatment, the common law applies.

The common law position relating to a child's competency to consent to treatment was established by the United Kingdom's House of Lords decision in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112.

This case determined that children may provide consent for medical treatment if the child has sufficient maturity, understanding and intelligence to enable them to fully understand the nature, consequences and risks of the proposed treatment and the consequences of non-treatment. This is commonly referred to as a child being 'Gillick competent' or a 'mature minor'.

In Queensland, this requires an assessment by a health professional on a case-by-case basis to determine whether a child is Gillick competent.

B: Age of consent

In Queensland, there is no fixed limit below 18 years of age at which a child or young person are deemed to be able to consent to health care, and so, as they mature, the child's capacity to consent generally increases.

A child may be determined to be Gillick competent where they have sufficient maturity, intelligence and understanding. This means they have the capacity to provide valid and informed consent, whether to receive or not receive a vaccination.

C: Professional judgement

Assessing whether a child is Gillick competent is a matter for professional judgement, which involves consideration of:

- the age, attitude and maturity of the child or young person, including their physical and emotional development;
- the child or young person's level of intelligence and education;
- the child or young person's social circumstances and social history;
- the nature of the child or young person's condition;
- the complexity of the proposed healthcare, including the need for follow up or supervision after the healthcare;
- the seriousness of the risks associated with the healthcare;
- the consequences if the child or young person does not have the healthcare; and
- where the consequences of receiving a vaccination include death or permanent disability, the child or young person should understand the permanence of death or disability and the profound nature of the decision they are making.

The health professional must assess the capacity of each child, and be satisfied that the child has sufficient understanding and intelligence to:

- fully comprehend the proposed treatment;
- provide personal medical history including allergies and health conditions;
- discuss the vaccination; and
- provide their written consent prior to administering the vaccine.

To enable the child to make an informed decision, the health professional must provide them with information about:

- the relevant disease and the vaccine to be administered;
- any risks and benefits of receiving the proposed treatment;
- any common side effects and reactions to vaccinations; and
- more serious but rare, side effects or inherent risks of the proposed treatment.

They must also provide the child with sufficient time to ask questions for further information.

In relation to the COVID-19 Vaccination Program by Queensland Health, a Guide for Informed Consent of Young People for COVID-19 Vaccinations has been created to assist health practitioners/health professionals in assessing capacity to consent for younger people (12-17 year old) and how to manage situations where they are not able to consent. Queensland Health also has a consent form for young people.

D: Liability

There is no specific policy addressing the State's liability in circumstances involving injury or harm, where a Gillick competent child has provided informed consent to medical treatment, including vaccination, where parental consent was not obtained. In these circumstances any liability would be determined by relevant law.