

## Refusal of Potentially Life-saving Treatment for Minors

*Ian Freckelton and Simon McGregor*

### Introduction

In a variety of ethically, clinically and legally fraught scenarios parents of children or the children themselves purport to decline life-sustaining or potentially life-saving treatment offered by clinicians. Their resistance to such treatment can arise from a carefully considered evaluation of options, taking into account treatment exhaustion, and the benefits, detriments and side-effects of treatment. Their position may also incorporate considerations such as religious opposition to particular modalities of treatment (such as the provision of blood products to Jehovah's Witnesses) or mistrust of certain forms of treatment (such as chemotherapy or radiotherapy). It may be reasoned and balanced, reaching an outcome with which it is easy to empathise. Or the decision-making process may be irrational and deeply troubling because it results in the refusal of treatment which has a good prospect of curing a life-threatening illness or at least significantly enhancing the duration and quality of a patient's life. Sometimes, there may also be the concern that the child's stance is influenced by the position of their parents or that the position adopted by parents is influenced by the views of others. Thus, in a variety of ways question marks may arise in relation to the authenticity of the ability of parents or children to take an informed position as to treatment or its cessation.

When there is a dispute about the provision of such treatment, the courts can be called upon to exercise a role in application of their *parens patriae* jurisdiction in the best interests of children. In this category of cases, there can be conflict between the perspectives of clinicians, child protection authorities, parents and children. At the heart of such litigation is the need for the courts to determine whether and when they should override the decisions of parents of very ill children and how they should take into account the views of children with varying levels of maturity. Among the important considerations that are relevant are the capacity for the exercise of decision-making, the autonomy of children and parents in respect of serious health matters, clinical considerations about treatment options and outcomes, as well as how 'best interests' considerations are to be determined.

Although there is also an important line of authority in which courts have declined the wishes of parents for continuation of futile treatment for their children,<sup>1</sup> the focus of this chapter reviews the law in relation to refusal of life-sustaining treatment for

1 See Ian Freckelton, 'Futility of Treatment for Dying Children' (2017) 25 *Journal of Law and Medicine* 7.

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