Young People and Immunisation: Exploring Issues when Parental Consent is Absent or Contested

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This paper provides a brief overview of the issues raised by the immunisation of young people aged 12 -17 years where they lack parental support and consent and has been prepared as a briefing paper for a Collaborative for Better Health and Regulation forum at The University of Melbourne.

Introduction

Existing law, policies and programs underpin Australia's high level of childhood immunisation. However, access to vaccination for young people (<18 years of age) can be challenging when support from parents or guardians is lacking, or difficult to obtain. The community response to mandatory COVID vaccination for children has highlighted that a lack of access can impact on young people's health, but also their well-being and capacity to engage in education, sport and cultural activities.

Vaccination and young people

Vaccination rates amongst persons under 18 years of age vary by immunisation type in Australia. For vaccinations on the national immunisation register, 94% of children have all recommended vaccinations by 60 months of age (National Centre for Immunisation Research and Surveillance, 2021). However, of adolescents aged between 11-14 years, only 59.2% of girls and 57.5% of boys had the vaccination for the human papilloma virus in 2021 (National Centre for Immunisation Research and Surveillance, 2021). This coverage level was lower again amongst Aboriginal and Torres Strait Islander young people (National Centre for Immunisation Research and Surveillance, 2021). Similarly, only 59.2% of 5-15 year olds have had two doses of the COVID-19 vaccine, whereas 96.2% of those 16 years and old have had the same number of doses (Australian Government, 2023). With the COVID-19 vaccine, government interventions targeted at adults 'moved' adults towards being vaccinated, whereas many of these government measures did not apply to those under 18 years or only applied to spheres of activity in which children are not generally involved in large numbers (eg, paid work). In the context of COVID-19, young people have expressed a strong desire to be vaccinated (Fazel et al, 2021), with vaccine hesitancy more frequently expressed by older adults and parents (Borga et al, 2021).

A lack of access to vaccinations for young people carries consequences for their future health status, as well as the health, social and economic well-being of the Australian population. Good health and having one's health care needs met enables individual human flourishing. A population with good health is able to work, engage with their communities, raise families, and be involved in politics, sports and the arts. Australia is recognised internationally for vaccination policy and has been able to eradicate certain vaccine-preventable diseases (such as poliomyelitis) or lower the incidence of, and morbidity or mortality associated with, certain communicable diseases (such as measles). The achievement of high levels of vaccine uptake has been driven by law, policies and programs seeking to make vaccines widely available, and easily accessible to all, particularly those in certain disadvantaged sub-groups (eg, indigenous people). However, there remain challenges with vaccine uptake in select population sub-groups. One of those sub-groups is young people (aged 12-17 years) who lack parental support and consent for vaccination.

Young people (12-17 years) seeking vaccination without parental consent

Young people will often be supported by their parents to be vaccinated. But circumstances also arise where young people may not have parental support or consent for vaccination. This situation may occur where a young person seeks their parents' support for vaccination but the parents oppose the vaccination and refuse to provide support. It could also arise where there is a dispute between parents about the young person being vaccinated (such as, but not limited to, where parents are separated or divorced) with each parent having a different view about whether their young person should be vaccinated (Clay v Dallas, 2022). There are also circumstances where young people seek vaccination without any involvement from their parents – without discussing or seeking their input or consent – such as where the young person forms the beliefs that their parents will not support them to be vaccinated.

The lack of parental support for vaccination of a young person creates numerous barriers to access to vaccination. A young person may simply go without vaccination if their parent does not support them to receive this medical intervention. Or the young person make seek vaccination on their own but this see them being turned away by their family doctor who does not want to risk comprising the therapeutic relationship, or they may have to travel considerable distances or make multiple attempts with different providers before they can find the care they seek. There are also concerns about a young person 'going it alone' that they receive sub-standard information, care or follow-up in relation to vaccination, and they are unable to take action to remedy these deficits. The young person may also suffer feelings of shame or stigma in seeking or being excluded from vaccination.

Legal and ethical issues

Some of the legal and ethics issues raised by a young person seeking vaccination without parental consent include:

- Does the law recognise that a young person has capacity to consent to vaccination and, if so, is this an age-based criterion or do other criteria apply?
- Is the test of legal capacity of young people understood and applied by health professionals in respect of vaccinations?
- How prevalent is the view in the community and in the health professions that responsible adults should make health care decisions for their children until they reach the age of 'majority'?
- Are health care practitioners willing to provide access to vaccination for a young person who lacks parental consent? Or will they refuse even if they find that the young person has legal capacity to consent? Why?
- What are the difficulties faced by health practitioners who are involved in making controversial decisions about young people's access to vaccination?

The law on the capacity of a young person to consent to medical treatment

The starting point in law is that capacity turns on the person receiving the medical treatment being an 'adult'. An 'adult' or a person of the 'age of majority' in most Australian jurisdictions is someone of 18 years, with parents having responsibility (including the capacity to consent to medical treatment) for those under 18 years (*Family Law Act 1975* (Cth) s 61C). In South Australia, the situation is different and a young person aged 16-17 years is also considered to have capacity to consent to medical treatment (*Consent to Medical Treatment and Palliative Care Act 1995* (SA) s 6). Therefore, the general position at law is that parents have the authority to consent to medical treatment on behalf of persons under 18 years because a person under that age prima facie lacks capacity to consent to medical treatment.

However, this general position is modified by the 'mature minor principle'. The law has developed the concept of the 'mature minor' which recognises the right of persons under the age of 18 years to consent to medical treatment if they meet a test of capacity as a 'mature minor'. The 'mature minor' principle is also called 'Gillick competence' (*Gillick v West Norfolk and Wisbech Area Health Authority, approved in Australia in Secretary, Department of Health and Community Services (NT) v JWB and SMB*). The mature minor test requires the health practitioner to determine whether a child has "a sufficient understanding and intelligence to enable him or her to understand fully what is proposed".

If a young person is a 'mature minor' in accordance with the *Gillick test* for the purposes of particular medical treatment, then the parents no longer have decision-making rights in respect of that treatment for the young person. If a young person is assessed as being Gillick competent, then they can make decisions about the medical treatment in respect of which their competence was assessed.

If a young person is assessed as *not* being Gillick competent, then the young person cannot make decisions about the medical treatment in respect of which their competence was assessed. The decision is to be made by the parent of the child.

Professional and ethical challenges

Assuming that a young person has legal capacity to consent, administering the vaccine vaccination to a young person needs to align with a clinician's professional obligation to act in the patient's best interests (Massie et al, 2021). This depends on the type of vaccination in question. But other considerations are also relevant including respecting the views of a young person, supporting them to look after their own health, and facilitating their development of health literacy and medical decision-making skills.

The young person's privacy should also be protected by the health practitioner. The practitioner may want to encourage and assist the young person to engage in open communication with their family, but it is not the practitioner's role to contact the parents without the consent of the young person. This may be difficult for the practitioner if they have a therapeutic relationship with the parents.

Centring care around the needs of the young person is consistent with a human-rights-based approach that requires respect for several rights under the United Nations Convention on the Rights of the Child (UNCRC), including rights such as a child's right to survival and development (Article 6); a right to access the health care they need (Article 24); and the right of a child, 'who is capable of forming her own views … to express those views freely in all matters affecting the child' (Article 12).

The Vax4Youth Research project

The clinical, legal and ethical issues raised by the vaccination of young people without parental consent are being investigated by the Vax4Youth research team. The project focus is on the COVID-19 vaccination for young people requesting vaccination without parental consent. The team is a collaboration between the Murdoch Children's Research Institute, the Melbourne Law School, and the Children's Bioethics Centre. The current phase of the project is a survey of primary health care practitioners in Victoria that aims to identify the scope and nature of encounters with young people aged 12–17 years wishing to be vaccinated for COVID-19 against the wishes of the parent or guardian or where it is contested. The survey is currently live and the team will analyse and report on results in the coming months. For those interested in staying informed about the research, please contact vax4youth@mcri.edu.au.

References

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- National Centre for Immunisation Research and Surveillance, 'Annual Immunisation Coverage Report 2021' (November 2022)

Cases

- *Clay v Dallas* [2022] FCWA 18
- *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112
- *Secretary, Department of Health and Community Services (NT) v JWB and SMB (Marion's Case)* (1992) 175 CLR 218

Legislation

- *Consent to Medical Treatment and Palliative Care Act 1995* (SA)
- *Family Law Act 1975* (Cth)

Treaties

- *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

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