1

Introduction

> It is readily apparent that the judicial understanding of Gender Dysphoria and its treatment have fallen behind the advances in medical science.[1]

This acknowledgement, by judges of the Family Court of Australia, underscores a broad failing of the Australian judiciary to craft law that accurately reflects the current state of medical knowledge regarding treatment for trans youth. This book will argue that the same observation could be made of the judiciary in England and Wales.

Access to medical treatment for trans youth occupies a haphazard and dynamic legal landscape. It sits amongst growing recognition of, and controversy over, trans rights and healthcare more broadly. Debate and controversy in this area are particularly acute where young people are concerned. Shifting legal principles sit alongside a developing medical understanding of the phenomenon of gender diversity,[2] the lived experience of trans young people[3] and the medical treatment that may be sought by or for them.[4] Clinical and legal regulations of this type of healthcare are controversial and increasingly political.[5] The medico-legal regulatory

[1] *Re: Kelvin* (2017) 57 Fam LR 503 [152] (Thackray, Strickland and Murphy JJ).

[2] Jenifer K McGuire and Quinlyn J Morrow, 'Pathways of Gender Development' in Michelle Forcier, Gerrit Van Schalkwyk and Jack L Turban (eds), *Pediatric Gender Identity* (Springer, 2020) 33.

[3] Clare Bartholomaeus, Damien W Riggs and Annie Pullen Sansfaçon, 'Expanding and Improving Trans Affirming Care in Australia: Experiences with Healthcare Professionals among Transgender Young People and Their Parents' (2020) 30(1) *Health Sociology Review* 58.

[4] Penelope Strauss et al, *Trans Pathways: The Mental Health Experiences and Care Pathways of Young Trans People. Summary of Results* (Telethon Kids Institute, 2017) 117.

[5] Josh Taylor, 'How Children Became the Target in a Rightwing Culture War over Gender', *The Guardian* (online, 24 August 2019) www.theguardian.com/society/2019/aug/24/how-children-became-the-target-in-a-rightwing-culture-war-over-gender; Florence Ashley and Sergio Domínguez, 'Transgender Healthcare Does Not Stop at the Doorstep of the Clinic' (2020) 134(2) *The American Journal of Medicine* 158.

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nexus applicable to decisions about gender affirming care by and for trans youth is particularly complex in Australia and in England and Wales.

Trans youth is used here as an umbrella term to refer to young people under the age of legal majority whose gender does not align with their sex assigned at birth. These youth may describe their gender as trans, agender, non-binary, genderqueer, genderfuck or employ other terms. Broadly, they may be distinguished from individuals who are cisgender, being individuals whose gender is congruent with their sex assigned at birth, be it female, male or indeterminate. Importantly, this book implicitly accepts that trans young people's self-designated gender and the terms they may use to describe it are valid.

In speaking of youth, this book is predominantly referring to adolescents. Adolescence refers here to the developmental stage between puberty commencing and the age of legal majority in Australia and in England and Wales, age 18.[6] Likewise, the word adolescent refers to an individual who has commenced puberty but is under the age of 18. By contrast, child and childhood are used to refer to individuals and the developmental stage that occurs from the beginning of life up until the commencement of puberty. In this book, the terms youth and young person are used interchangeably with adolescent, with references to children and childhood clearly marked.

Trans youth may seek medical treatment to explore or affirm their gender identity. For those that do, medical treatment is available in Australia and in England and Wales, where clinically indicated.[7] However, it must be noted that not all trans youth desire medical treatment to explore or affirm their gender identity,[8] particularly those who identify themselves as non-binary.[9] Trans youth and their families

[6] *Age of Majority Act 1974* (ACT) s 5; *Minors (Property and Contracts) Act 1970* (NSW) s 9; *Age of Majority Act 1974* (NT) s 4; *Law Reform Act 1995* (Qld) s 17; *Age of Majority (Reduction) Act 1970* (SA) s 3; *Age of Majority Act 1973* (Tas) s 3; *Age of Majority Act 1977* (Vic) s 3; *Age of Majority Act 1972* (WA) s 5. Note that this list is not exhaustive of Australian territories. It is outside the scope of this book to consider the law relevant to territories external to mainland Australia and to Jervis Bay.

[7] See, for example, Michelle Telfer et al, *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents* (Version 1.3, Royal Children's Hospital Melbourne, 2021).

[8] In the 2016 *Trans Pathways* survey of 859 trans youth aged 14–25 in Australia, 'a significant number of … participants were not interested in medically transitioning: 21.3% … were not interested in using puberty blockers, 15.9% did not want to access masculinising or feminising hormones (such as testosterone, oestrogen and progesterone) and 20.2% were not interested in surgery'. Strauss et al (n 4) 117.

[9] Beth A Clark et al, 'Non-Binary Youth: Access to Gender-Affirming Primary Health Care' (2018) 19(2) *International Journal of Transgenderism* 158, 159; Jennifer Hastings, 'Approach to Genderqueer, Gender Non-Conforming, and Gender Nonbinary People' in Madeline B Deutsch (ed), *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* (University of California San Francisco, 2nd ed, 2016) 69; For reporting on these youth in Australia, see Janine Cohen, 'Olivia Is One of a Number of Children around Australia Trying to Delay Puberty', *ABC News* (online, 2 March 2020) www.abc.net.au/news/2020-03-02/not-a-boy-not-a-girl-four-corners-olivia-delaying-puberty/11998826.

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may encounter legal barriers to accessing medical treatment. As Bell and Bell note, there is often 'significant mismatch between current medical best practice and legal regimes dealing with children and young people's gender expression'.[10]

Historically, Australian case law has imposed significant barriers to trans youth accessing treatment, requiring applications to the Family Court of Australia for approval of consent or authorisation of treatment.[11] This emanated from a body of case law designed to safeguard young people, though it will be argued here that it has accomplished quite the opposite. The enforcement of expensive, time-consuming and frequently shifting legal barriers has been found to have a damaging effect on trans youth and their families.[12] The process was found to be prohibitively costly for many, resulting in delays to treatment and to be damaging to the psychological wellbeing of trans young people. This is troubling as this cohort of young people already report high levels of mental distress.[13]

The landmark 2016 *Trans Pathways* study found that, of 859 trans youth in Australia aged between 14 and 25, 79.7 per cent had self-harmed and 48.1 per cent had attempted suicide some point in their life.[14] They were also more likely to have been diagnosed with depression (74.6 per cent) or anxiety (72.2 per cent) than their cisgender peers in Australia.[15] This is consistent with the literature that reports that trans youth are likely to present at a gender clinic with one or more co-occurring internalising psychiatric conditions.[16] It is particularly concerning that they might face legal barriers to treatment as a 2013 study in Ontario found that the greatest risk for suicide was present in the time period when a trans individual had decided to seek gender affirming medical interventions but was not yet able to access that healthcare.[17]

While trans youth are a vulnerable group who experience a high burden of mental health issues, gender affirming care is reported to improve psychosocial outcomes.[18] A growing body of research suggests that early medical treatment for

[10] Felicity Bell and Anthony Bell, 'Legal and Medical Aspects of Diverse Gender Identity in Childhood' (2017) 25(1) *Journal of Law and Medicine* 229, 229.

[11] Malcolm K Smith and Ben Mathews, 'Treatment for Gender Dysphoria in Children: The New Legal, Ethical and Clinical Landscape' (2015) 202(2) *Medical Journal of Australia* 102, 102.

[12] Fiona Kelly, '"The Court Process Is Slow but Biology Is Fast": Assessing the Impact of the Family Court Approval Process on Transgender Children and Their Families' (2016) 30 *Australian Journal of Family Law* 112.

[13] Penelope Strauss et al, 'Mental Health Issues and Complex Experiences of Abuse among Trans and Gender Diverse Young People: Findings from Trans Pathways' (2020) 7(3) *LGBT Health* 128.

[14] Ibid.

[15] Strauss et al (n 4) 25–26.

[16] See Chapter 2, 2.4.4 Co-occurring Conditions and Mental Health Vulnerabilities.

[17] Greta R Bauer et al, 'Suicidality among Trans People in Ontario: Implications for Social Work and Social Justice' (2013) 59(1) *Service Social* 35.

[18] Annelou LC de Vries et al, 'Young Adult Psychological Outcome after Puberty Suppression and Gender Reassignment' (2014) 134(4) *Pediatrics* 696.

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gender dysphoria optimises outcomes for young people's psychological and social development, as well as any surgical modifications they may seek once they reach adulthood.[19] Thus, where the law presents barriers to accessing therapeutic medical interventions, which may alleviate some difficulties for trans youth, this is concerning and warrants scrutiny. Telfer et al have argued that the barriers to accessing treatment in the Australian legal system can be expected to result in 'an ongoing rise in morbidity and mortality amongst transgender youth'.[20] These harmful and onerous legal barriers were unique to Australia for some time. However, in England and Wales, similar legal barriers to consent specific to healthcare for trans youth were erected in late 2020 and subsequently overturned in 2021.[21]

This book aims to prove a comprehensive and comparative critical scholarly analysis of the historical and current legal principles regarding consent to this healthcare for trans youth in Australia and in England and Wales. The legal barriers that may be encountered by trans youth, and their legal guardians, in providing lawful consent to treatment in the respective jurisdictions are explored and critically compared. This is informed by an in-depth discussion of the medical literature on treatment for trans youth, including clinical guidelines, and the outcomes of treatment and outcomes for trans youth who are unable to be treated or face delays in obtaining treatment.

Given the harmful consequences of legal barriers in this area,[22] it is imperative that legal principles rest upon valid interpretations of the medical literature. Despite this, one aspect of the law that is particularly underexplored in the literature is the understandings of medical knowledge that inform judicial reasoning in relation to attaching special requirements to consent for this area of healthcare. There is also a dearth of comprehensive comparative work examining how the problematic Australian legal framework regarding consent to treatment for gender dysphoria for adolescents compares with the law in other countries. In this book, the medical literature is juxtaposed with the interpretation of medical literature by the judiciary in Australia, and in England and Wales, and analysed for congruency. A discussion of differences in legal principles between the jurisdictions, both historically and currently, paints a portrait of significantly differing congruency with medical knowledge over time and across jurisdictions.

[19] Ibid; Rosalia Costa et al, 'Psychological Support, Puberty Suppression, and Psychosocial Functioning in Adolescents with Gender Dysphoria' (2015) 12(11) *Journal of Sexual Medicine* 2206; Jack L Turban et al, 'Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation' (2020) 145(2) *Pediatrics* e20191725.

[20] Michelle Telfer, Michelle Tollit and Debi Feldman, 'Transformation of Health-Care and Legal Systems for the Transgender Population: The Need for Change in Australia' (2015) 51(11) *Journal of Paediatrics and Child Health* 1051, 1052.

[21] *Bell and Mrs A v Tavistock and Portman NHS Trust* [2020] EWHC 3274 (Admin). Note this was overturned on appeal, see *Bell v Tavistock* [2021] EWCA Civ 1363.

[22] Kelly (n 12).

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This book argues that legal barriers to clinical practice, derived from legal conclusions about medicine, should be congruent with and reflect the current state of medical knowledge. This is especially true where those legal barriers are known to be harmful. This book finds that the legal frameworks in Australia, and in England and Wales, have significantly differed in their congruency with medical knowledge over time and across jurisdictions. The legal framework is also significantly more burdensome for trans youth in Australia than those in England and Wales. Rather than resting on the shoulders of medical knowledge, the law in Australia is unnecessarily discriminatory and prejudicial, denying the validity of trans identity. Such an approach represents cisgenderism, a 'cultural and systemic ideology that denies, denigrates, or pathologizes self-identified gender identities that do not align with assigned gender at birth as well as resulting behavior, expression, and community'.[23] Cisgenderism undergirds the Australian law in this area as gender affirming treatment continually attracts different rules than those which apply to other types of medical interventions for young people, without clear justification.

The legal framework in Australia should be reformed to remove unnecessary barriers to medical treatment for trans young people. This book echoes the calls of academics, judges and medical practitioners who have urged for examination and reform of this area of law in Australia.[24] It has been said that in legal responses to developments in medical knowledge and practice, the '[l]aw, march[es] with medicine but in the rear and limping a little'.[25] This book is an urgent plea for the law to walk in step with the current state of medical knowledge and to support rather than hurt trans young people.

1.1 STRUCTURE AND METHODS

The overarching research questions guiding this book are:

- *How does the law in Australia and the law in England and Wales governing consent for medical treatment for trans youth compare?*
- *Is the law in Australia, and in England and Wales, concerning consent to medical treatment for trans youth congruent with the current state of medical knowledge?*

Addressing these research questions necessitates discussion of medical knowledge regarding treatment of trans youth, the law governing access to that medical

[23] Erica Lennon and Brian J Mistler, 'Cisgenderism' (2014) 1(1–2) *TSQ: Transgender Studies Quarterly* 63, 63.

[24] Mark Bannerman, 'Family Court Chief Justice Calls for Rethink on How High Court Handles Cases Involving Transgender Children', *ABC Four Corners* (online, 18 November 2014) www.abc.net.au/news/2014-11-17/chief-justice-calls-for-rethink-on-transgender-childrens-cases/5894698?WT.mc_id=Corp_News-Nov2014%7CNews-Nov2014_FBP%7Cabcnews.

[25] *Mount Isa Mines v Pusey* (1970) 125 CLR 383 (Windeyer J).

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treatment, and how these interact and compare across the jurisdictions. Accordingly, this book is split into three parts.

PART I: MEDICAL KNOWLEDGE REGARDING TREATMENT FOR TRANS YOUTH

The first part of this book lays out the medical literature. Chapter 2 presents an overview of what is known about gender dysphoria in childhood and adolescence. First, this chapter begins with a discussion of terminology commonly used in literature on gender diversity, as well as the preferred terms within this book. Second, literature on the medicalisation of gender diversity is reviewed to contextualise the relationship between gender and the medical establishment. Third, the diagnoses that may be given to trans children and adolescents that present to a medical professional for treatment are reviewed alongside critical commentary. Fourth, the research on gender variance in children and adolescents is reviewed broadly. Key themes identified in the literature include prevalence, determinants of gender diversity, the natural history of diverse gender identity and co-occurring conditions of trans youth. The literature overviewed there shows that this area of research has advanced significantly in recent years. However, it is also in constant flux and answers to key questions are unsettled. This review of the medical literature provides necessary context and commentary on the evidence base for treatment recommendations for children and adolescents discussed in Chapter 3.

Chapter 3 builds on the medical literature discussed in Chapter 2 to present an overview of the current state of medical knowledge for treatment of children and adolescents with gender dysphoria. To address this, the chapter begins with an overview of the literature on how gender dysphoria is treated in childhood and adolescence. This is split into two subsections, first covering treatment for prepubertal youth and, second, treatment for pubertal youth, as the treatment approach for those cohorts is considerably different. Medical treatment of relevance for pubertal youth is the primary focus of this chapter. Next, the research on outcomes of that medical treatment for trans youth is reviewed. The review is organised by reference to the staged treatment protocol: stage 1 – pubertal suppression; stage 2 – administration of gender affirming hormones and stage 3 – surgical interventions. Both physical and psychosocial effects of treatment are outlined. Lastly, to contrast, research is reviewed to determine what the likely outcomes are for trans youth if they do not receive medical treatment in adolescence. The review of the current state of medical knowledge surrounding the treatment of gender dysphoria reveals that there is substantial, and building, consensus around the appropriate treatment to be offered to trans youth in adolescence. It finds that while there may be a limited evidence base regarding long-term treatment outcomes, it is rapidly growing and supportive of treatment prior to adulthood.

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PART II: THE LEGAL FRAMEWORKS IN AUSTRALIA AND IN ENGLAND AND WALES

The second part of the book sheds light on the legal frameworks that govern access to this medical treatment. It employs doctrinal legal analysis, or conventional 'black-letter law' analysis, to identify and interpret the nature of the legislative provisions and case law principles that apply to the context of consent for medical treatment of trans youth with gender dysphoria.

The sources of law that are the subject of this analysis were determined through locating and synthesising the relevant legislation and case law. For Australia, relevant legislation in Australian states and territories, as well as any Commonwealth legislation, were located and included in this analysis. Similarly, the law in England and Wales, comprising primary legal instruments, was included. Secondary literature commenting directly on these sources of law was located to aid in interpretation of the law and analysis.

Historical legal analysis adds another dimension to this doctrinal analysis. Historical legal analysis employs orthodox doctrinal analysis to identify the nature and development of legal principles over time, rather than only identifying the nature of currently applicable legal principles. In this part of the book, historical legal analysis was utilised to identify how the law has developed and changed over time, and to tease out similarities and differences between case law principles, building a historical narrative of the jurisprudence. This analysis is both doctrinal and comparative, the comparator being different cases over time rather than the law in different jurisdictions. This approach was adopted so that the congruency of the relevant Australian law with medical literature could be determined at different points in time, with a focus on the congruency of the legal principles with the current medical literature.

While an aim of this book is to compare the law in Australia and the law in England and Wales, analysing the law in each jurisdiction, separately first, allows for an in-depth consideration of the internal consistency of the respective legal frameworks and a narrative of their development over time. This adds another dimension to, and strengthens, the comparative analysis when brought together in Chapter 6.

Chapter 4 synthesises and analyses the Australian law governing consent to medical treatment for trans adolescents. This is contextualised first by critically examining the general principles in respect of consent to medical treatment by and for young people in Australia. The actors involved in consent processes, young people, their legal guardians and courts are outlined with respect to the scope and limitations on their power. Notably, this includes discussion of the landmark decision of the High Court in *Marion's Case*, alongside further cases that developed and applied the legal principles from that case. Significantly, it will discuss the import of *Gillick* competency into Australia from the United Kingdom and subsequent development of Australian case law on the competency of youth to make medical decisions.

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Particular emphasis is given to the development of principles applicable to a category of treatments for which unique rules apply, known as 'special medical procedures'. Such an examination is important as they form the foundation of the law in this area. The legal principles pertaining to special medical procedures developed in such a way that they became relevant to questions of consent in circumstances where trans youth sought medical treatment. Building on the law on special medical procedures generally, this chapter then presents an account of the case law relating to the treatment of gender dysphoria in adolescence in greater detail. More specifically, this encompasses Australian cases that constitute jurisprudence on consent for the three-staged treatment approach for adolescents outlined in Chapter 3.

Cases concerning consent for medical treatment of trans youth span a broad range of time, necessarily encompassing developments in medical knowledge and practice. Starting with the 2004 case of *Re: Alex*, a chronological discussion of the cases in this area is presented to show the legal developments and the implications of these cases for obtaining lawful consent to treatment. Development of the law has accrued through incremental differences in medical evidence and legal arguments presented to the judiciary over time. In such cases, judges of the Family Court of Australia have often considered themselves limited to ruling on the facts of the particular case rather than taking into account broader considerations relating to the law in this area. It will be shown that, while the 2017 Full Court of the Family Court decision of *Re: Kelvin* removed court oversight for many clinical decisions, this judgment is limited in its scope and there are areas of the law that remain inconsistent and unexamined. A reversal in the direction of the law and the return of court oversight for many more medical decisions, arising out of the 2020 *Re: Imogen* judgment, and the likely impact of this, are examined. Particular emphasis is given to the development of principles in relation to dispute and to *Gillick* competency and the impact this has on the ability of trans youth to access medical treatment. The current state of the law and relevance of the legal principles for trans youth and their families, as well as clinicians working in this area, are laid out. It will be shown that, while some legal barriers have been removed by case law, those that remain are troubling. It is argued that the Australian case law in this area is incoherent, inconsistent and ultimately fails to achieve its aims to safeguard the health and wellbeing of trans young people and their right to exercise bodily autonomy.

Chapter 5 presents an equivalent synthesis and analysis of the law in England and Wales governing consent to medical treatment for trans children and adolescents. First, the general legal principles governing consent to children's medical treatment in England and Wales are detailed. In doing so, the various avenues to consent for children's medical treatment in England and Wales are laid out. Second, it will be seen that, historically, there has been limited guidance from case law on the situation of trans young people; however, this was altered with the landmark 2020 decision of the High Court in *Bell v Tavistock and Portman NHS Trust* and subsequent

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appeal. Key changes to the law in respect of trans youth's ability to seek medical treatment as a result of these judgments are analysed. Finally, the law is synthesised as to what represent the current legal principles applicable to trans youth seeking medical treatment in England in Wales.

PART III: COMPARATIVE, HISTORICAL AND MEDICO-LEGAL ANALYSIS OF THE LAW

The third part of this book brings together parts I and II of this book, presenting a comparative analysis of the law in Australia and the law in England and Wales, with respect to each other, and the medical literature.

In Chapter 6, doctrinal comparative analysis is employed to juxtapose the law in Australia with that in England and Wales.[26] It must be noted that there is no widely accepted definition of the nature of the comparative legal method.[27] Paris suggests that 'since the comparative method does not rest on an agreed framework, it is open ended and will necessarily be "dictated by the strategy of the comparative lawyer"'.[28] That is, 'comparative law is, by nature, process-related' and, as such, the 'the researcher has to master the art of justifying her choices about why and how she uses comparative law'.[29] To that end, this book broadly adopts the approach outlined by Kamba, comprising three phases: first, the law in each jurisdiction is described comprehensively; second, the similarities and differences between the law are compared; and, third, an account for these similarities and differences is described along with their implications.[30] The first phase is accomplished in Chapters 4 and 5 with the second and third phases encompassed by Chapter 6.

The jurisdictions of Australia and of England and Wales were chosen due to the shared legal ancestry of the common law countries and the heavy influence that early English cases have had on the development of the relevant Australian law, the *Gillick* case in particular.[31] What is compared is both the presence or absence of relevant legislation and case law, its conceptual and operational nature and scope and the possible resulting outcomes of any differences. It is recognised that, while an ultimate aim of this research is to improve the law, '[e]ach law is deeply embedded

[26] Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Hart Publishing, 2014).

[27] Marie Luce Paris, 'The Comparative Method in Legal Research' in Laura Cahillane and Jennifer Schweppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press, 2016) 39, 41.

[28] Ibid 42; citing E Örücü, 'Developing Comparative Law' in D Nelken and E Örücü (eds), *Comparative Law: A Handbook* (Hart Publishing, 2007) 43.

[29] Paris (n 27) 42, 48.

[30] WJ Kamba, 'Comparative Law: A Theoretical Framework' (1974) 23 *International and Comparative Law Quarterly* 485.

[31] *Gillick v West Norfolk AHA* [1986] AC 112.

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in its historical, social, cultural and economic context, and there is no such thing as "the better law"'.[32] As such, the analysis will engage with the reasons behind and significance of differences and similarities, grounded in the legal systems and legal cultures of the respective jurisdictions. The similarities between the two jurisdictions include the actors involved in consent processes for young people and the aim of this area of law, the best interests of the child. Major points of difference include the statutory age of medical decision making, whether treatment for gender dysphoria is considered 'special', *Gillick* competence and concurrent consent powers, and the law regarding disputes and the need for dual parental consent.

In Chapter 7, the medical literature is utilised as an evaluative lens through which to consider the soundness of the law in Australia, and in England and Wales. The historic and current legal frameworks are assessed with reference to the state of medical knowledge identified in Chapters 2 and 3 to identify points in time where the law was and was not congruent with medicine.

Like the comparative research method, the medico-legal analysis employed here is not subject to clear definition in the literature on legal research methods. By way of explanation, the process of medico-legal analysis employed was to: (1) identify the law subject to analysis, (2) discern the current state of medical knowledge and (3) analyse the law through the lens of this medical knowledge. This process was undertaken to ground the discussions about medical treatment present in the case law, as well as to robustly consider the congruency of the findings about medical knowledge historically made in the case law with the current state of medical knowledge.

The medico-legal analysis focuses predominantly on an assessment of congruency of law with medicine across three key themes: (1) the nature and purpose of treatment, (2) the effects of treatment and (3) the risks and consequences of a wrong decision being made about treatment. These themes were chosen due to the significance they have assumed in the jurisprudence outlined in Chapters 4 and 5. It will be shown that, while historically, findings in the Australian case law have been incongruent with the medical literature, the current legal framework is significantly more congruent than in the past. The findings in the England and Wales decision analysed in this chapter are broadly incongruent with respect to current medical knowledge, though it is noted to no longer be authoritative.

It must also be noted that the primary medico-legal analysis undertaken in this chapter is an evaluation of the key case law principles using the evaluative standard of *current* medical knowledge. This retrospective type of analysis enables clear conclusions to be drawn. However, it must be recognised that current medical knowledge may have evolved from that which was available at the time of specific decisions. That is, this approach, in isolation, poses a risk of holding all judges in

[32] Paris (n 27) 48.

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those cases to an unfair standard. To assess the legal principles in each case law decision against the medical knowledge *exactly* as it existed at the date of each case might be simply impossible in the strict sense. Despite this, where possible, and to as reasonable an extent possible, the state of medical knowledge that existed at the time of the case law decision being evaluated was identified and included in the analysis as well.

Chapter 8 concludes the book by charting a path forward for law reform. Suggestions for reform of the significantly more burdensome legal framework in Australia, as opposed to England and Wales, are presented. Throughout this book, there is a plea for the law to support, rather than impede, trans young people's gender expression and bodily autonomy.

1.2 SCOPE AND LIMITATIONS OF THIS BOOK

This book considers the barriers to accessing medical treatment for trans youth in terms of the requirement for lawful consent. However, there may be many other barriers, legal and otherwise, to accessing care that are outside the scope of any single book to examine. Further, a comprehensive synthesis of the current state of medical knowledge regarding the developmental capacity of adolescents to provide consent was not within the scope of this analysis but may be relevant to a legal response to legislating on age thresholds for capacity to make medical decisions. While this research points to the need for law reform in this area, a comprehensive analysis of the ways in which this could be implemented is also outside the scope of this book.

The material referred to in this book reflects the law and medical knowledge in February 2022.

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