



## Learning Works

### Some related background reading and points for discussion

### Discussion Starter 3: Refusal of Consent on Religious Grounds

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*These research notes are of a general nature, and are provided only as background and as discussion starters. Readers should check the relevant laws in their own state or territory.*

#### Background:

Parents are generally considered capable of consenting to medical procedures for their children.<sup>1</sup> A provision in the *Consent to Medical Treatment and Palliative Care Act 1995* (SA) provides that parental consent must be sought for medical treatment, however, if consent is refused, the treatment may be administered contrary to the wishes of the parents if it is held to be in the best interests of the child.<sup>2</sup> The child's best interests will encompass factors other than medical interests; emotional and other welfare issues are also a consideration.

Religion is a highly important aspect of many people's lives. Religious beliefs may drive the decisions that people make, not only in their day-to-day lives, but also regarding medical treatment. While there is no specific law in South Australia stating that parents cannot refuse consent for medical treatment for their children on religious grounds, Courts have consistently ordered treatment for children in these circumstances, holding that it is not in the best interests of the child to suffer serious injury, or in extreme cases, death.<sup>3</sup> Furthermore, other States of Australia have enacted legislation allowing doctors to give blood transfusions to children against the parent's wishes,<sup>4</sup> indicating a societal trend towards overriding refusal based on religious grounds.

Two examples of religious groups that refuse certain types of medical treatment are Jehovah's Witnesses and Christian Scientists. Jehovah's Witnesses firmly believe that blood transfusions are wrong, and as such will refuse consent for transfusions, preferring to have alternative treatment options. If a child is raised as a Jehovah's Witness, parents are likely to refuse consent for blood transfusions, even if the consequences may be severe. Christian Scientists do not believe in medical treatment, and as such will not seek the assistance of doctors when a child falls ill. This makes it difficult for doctors to have refusal of consent overridden, as they will often be unaware of a child's illness.<sup>5</sup>

#### Issues:

- Respect for religious beliefs needs to be balanced with the best (medical) interests of the child
- There may be circumstances where parents want a child to have a procedure, but the child does not wish to have a procedure on religious grounds – there is no clear legal principle establishing who has authority in such a situation
- If a child is forced to have a procedure, contrary to his or her religious beliefs, it may result in alienation from family and community members

<sup>1</sup> *Consent to Medical Treatment and Palliative Care Act 1995* (SA) s12(b)

<sup>2</sup> *Consent to Medical Treatment and Palliative Care Act 1995* (SA) s13(5)

<sup>3</sup> *Re A(Children)* [2000] EWCA Civ 254, [Auckland Healthcare Services Ltd v T](#) [1996] NZFLR 670

<sup>4</sup> *Human Tissue Act 1982* (Vic) s24

<sup>5</sup> <http://www.christianscience.com/blogs/articles-journal/christian-science-healing-practices/>

- Parents may face charges of criminal neglect if they do not seek treatment for an ill child
- Alternative treatment options may not be available, or may not be as effective

**Questions:**

- What if the child is too young to be said to “accept” a religion?
- What can a family do when their religious beliefs conflict with the interests of their child?
- Can the law force children to have operations contrary to religious beliefs?
- Can children go against their parent’s wishes in this situation?
- Can parents be criminally liable for not consenting to procedures for their children?
- Are there alternatives to blood transfusions?
- Are the alternatives to blood transfusions as safe and effective?
- Are there alternatives to other medical treatments?

**Further Information:**

*Consent to Medical Treatment and Palliative Care Act 1995 (SA)*

*Family Law Act 1975 (Cth)*

Jehovah’s Witnesses Official Website, at

<http://www.watchtower.org/>

Christian Science Official Website, at

<http://www.christianscience.com/index.html>

Alternatives to Blood Transfusion, at

[http://www.cancer.org/docroot/ETO/content/ETO\\_1\\_4X\\_Alternatives\\_To\\_Blood\\_Transfusion.asp?sitearea=ETO](http://www.cancer.org/docroot/ETO/content/ETO_1_4X_Alternatives_To_Blood_Transfusion.asp?sitearea=ETO)