

PRACTICE GUIDE

Gillick competence

Use this practice guide to understand Gillick competence, how it is assessed, and the implications for child protection practice within the Queensland context.

What is Gillick competence

Gillick competence is a legal concept used to determine whether a child has sufficient understanding, intelligence, and emotional maturity to make the specific health care decision being considered. This includes understanding the nature of the proposed health care, its benefits, risks and potential consequences, the available alternatives, and the consequences of not proceeding with the proposed health care. This will vary according to the significance of the health care decision including the seriousness of the risks and consequences and other factors, such as the maturity and understanding of the child at that point in time.

Gillick competence is specific to the healthcare decision and the child's maturity, understanding and circumstances at the time the decision is made. **An assessment of the child's Gillick competence is required for each new healthcare decision and for the same decision at a different time.**

The complexity of the health care decision and the potential seriousness of its consequences influence the level of understanding and maturity required for a healthcare practitioner to determine a child as Gillick competent.

For example, a child may be deemed Gillick competent to understand and consent to their health care decision to take pain-relief medication and hormonal therapy to manage endometriosis pain, but not Gillick competent to consent to endometriosis surgery. The same child's Gillick competence is reassessed at each appointment where both the pain-relief and hormonal therapy medications are reviewed.

Origin of Gillick competence

The legal position relating to a minor's capacity to consent was established by an English case known as Gillick. Gillick was approved by the High Court of Australia in a case known as Marion's case. The Gillick decision established that a child's decision-making capacity increases as they develop sufficient maturity and understanding. As a child's capacity increases, the authority of a parent to make decisions on the child's behalf correspondingly decreases.

Who assesses Gillick competence?

Healthcare professionals, such as doctors, nurses, or allied health practitioners, are responsible for assessing if a child is Gillick competent. The assessment is specific to the treatment or medical decision being considered and should be conducted by a professional with expertise relevant to the proposed health care intervention.

The Queensland Health [Guide to informed decision-making in health care](#) provides the following:

While it is sufficient to give routine medical and dental treatment, including contraceptive advice, without the need for parental consent for a child who has the capacity to consent on their own, it is good practice to encourage the child to consider seeking the involvement of a parent or other adult of their choosing before reaching a decision as this may:

- provide the adult with appropriate information (including any necessary supervision arrangements and possible adverse effects) so they might support the child in their decision making and during the health care
- give the adult opportunity to provide information the child may not be aware of (for example, details of previous medical conditions or family history) and to have questions answered in advance
- allow the adult the opportunity to attend when the health care is provided with the agreement of the patient.

If a child does not wish to involve a parent or other adult, the reasons for this are explored. If the child has sufficient capacity to decide not to involve an adult, their wishes usually need to be respected but may be overruled in some circumstances. For example, when there are potential child protection concerns arising from a pregnancy or sexually transmitted infection.

Queensland Health [Guide to informed decision-making in health care: Part 3](#)

Gillick competence assessments

To determine if a child is Gillick competent, the healthcare professional must assess whether the child:

- understands the nature and purpose of the health care decision
- can weigh the risks and benefits of what is being proposed
- appreciates both the short and long term potential consequences of the healthcare decision
- demonstrates maturity in their reasoning and decision-making, including their ability to apply information to their own circumstances and consider the likely consequences of their decision.

The more significant or complex the decision, the higher the level of understanding and maturity required.



The assessment of a child's Gillick competence to consent, does not include the child's ability to manage all aspects of the health care such as the safe storage of medication.

When a child is not Gillick competent

If a child is assessed as not Gillick competent, consent must be obtained from their parent or legal guardian before proceeding with the health care decision or treatment. The child can still contribute to their health care decisions as the medical practitioner will consider their views and wishes alongside that of their parent or guardian.

Gillick competence for a child in care

For a child assessed as Gillick competent who is subject to a child protection order and in the custody or guardianship of chief executive, the healthcare practitioner is not required to share the Gillick competence assessment with Child Safety. However, mandatory reporting and information sharing provisions still apply when needed. This means a child might be prescribed medication for a condition that has not been previously documented for them and the information sharing provisions enable Child Safety to seek a copy of this information if required.

In this instance, use collaborative working relationships with the child, their safety and support network, and healthcare providers to engage with the child to discuss and determine:

- how best to support the child to manage this specific health care decision
- how any medication will be safely stored
- what support they may need for the administration of medication
- the documentation of doses (including accidentally missed doses or over-doses)
- how to ensure the safety of themselves and others who they live with.

Document these discussions, the questions asked and methods for support established within the placement agreement and the case plan (including the child's strengths and needs assessment).

Where a child in care has been assessed as Gillick competent **and** consents to the proposed treatment, including the use of psychotropic medication, neither form ([Clarification of purpose for psychotropic medication](#) nor [Parental consent for psychotropic medication](#)) is required. This includes situations where psychotropic medication is prescribed to manage behavioural symptoms. The safety and support network should capture the supports the child requires in the placement agreement and case plan.

Concerns regarding the Gillick competence assessment

Consistent with the paramount principle of the *Child Protection Act 1999*, that the wellbeing and best interests of the child are paramount, where a healthcare professional has assessed a child as Gillick competent in relation to a specific health care decision, the child may consent to that health care. In these circumstances, the delegated officer is not required to provide consent for the proposed health care, and their role is to support the implementation of the child's decision.

There may be occasions where information or behaviour raises concerns about whether a child who has been assessed to have Gillick competence continues to demonstrate the level of understanding, emotional maturity, or decision-making capacity on which the assessment was based. For example, concerns may arise if the child is using their prescribed medication in a way inconsistent with the treatment plan or intended purpose. While these concerns may warrant further consideration, they do not, of themselves, invalidate the healthcare professional's assessment of Gillick competence. Child Safety's role is to support the standing Gillick competence assessment unless there is reliable medical evidence or expert opinion to the contrary.

If concerns remain about the maturity of the child and the correctness of the assessment:

- discuss with the child the benefits of seeking a second opinion or review of the health care decision, or
- seek specific legal advice.

Further reading

[Guide for health professionals](#)

[Guide to Informed Decision-making in Healthcare; 2nd Edition](#)

[Children and consent - Avant](#)

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