MINORS' ACCESS TO GENDER-AFFIRMING HEALTHCARE IN AUSTRALIA: CURRENT REVIEWS AND THEIR CLINICAL, LEGAL AND POLICY CONTEXTS

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In 2025, two concurrent reviews were established to consider the provision of gender-affirming healthcare to minors in Australia: a state-based review in Queensland and a national process led by the National Health and Medical Research Council. These reviews emerged in the context of prolonged legal and clinical uncertainty, intensified by the growing politicisation of this topic in Australia and globally. This article examines the origins of these two review processes, their institutional authority, and their capacity to provide a robust foundation for future practice and access to care. It argues that the national process is capable of delivering a coherent and credible framework to guide gender-affirming care for minors, whereas Queensland's review risks entrenching uncertainty through jurisdictional fragmentation. National guidelines offer a pathway to address the existing challenges by providing an evidence-based foundation for clinical practice, legal and regulatory certainty, and fair access to care for those who need it.

I INTRODUCTION

In recent years, minors' access to gender-affirming healthcare has increasingly become the subject of media coverage and public discussion.[1] This discussion has been fuelled by the decision in the English case of *Bell v The Tavistock and Portman NHS Foundation Trust* ('*Bell*'),[2] and by the *Independent Review of Gender Identity Services for Children and Young People* commissioned by the English National Health Service and led by Hilary Cass.[3] It also coincides with broader politicisation and marginalisation of transgender people across social, legal, and political spheres globally.[4]

In 2025, both the Australian Government and the Queensland Government announced reviews into gender-affirming treatment for minors, including puberty suppression (sometimes called 'stage 1 treatment') and gender-affirming feminising or masculinising hormonal therapy (sometimes called 'stage 2 treatment').[5] The Queensland Government has commissioned an independent review of puberty suppression and gender-affirming hormone therapies in Queensland's public paediatrics gender services,[6] and the Australian Government has tasked the National Health and Medical Research Council ('NHMRC') with undertaking a comprehensive review of the *Australian Standards of Care and*

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[1] Gabrielle Wolf, 'Gender-affirming Medical Treatment for Minors: International Legal Responses to an Evolving Debate' (2024) 47(3) *University of New South Wales Law Journal* 744, 746.

[2] *Bell v The Tavistock and Portman NHS Foundation Trust* [2020] EWHC 3274 ('*Bell*'), and on appeal, *Bell v The Tavistock and Portman NHS Foundation Trust* [2021] EWCA Civ 1363 ('*Bell Appeal*').

[3] Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report* (Report, April 2024) ('*Cass Review*').

[4] See, eg, Myles Williamson, 'A Global Analysis of Transgender Rights: Introducing the Trans Rights Indicator Project (TRIP)' (2024) 22(3) *Perspectives on Politics* 799, 799, 814; Paula Gerber, *Sex, Gender & Identity: Trans Rights in Australia* (Monash University Publishing, 2025) 40–62.

[5] Both puberty suppression and gender-affirming hormones are regarded as falling under the umbrella of 'gender-affirming treatment'. These treatments are best not conceptualised as 'stages', as this incorrectly implies (1) that an individual must have commenced an earlier 'stage' before accessing a later one, and (2) that all individuals will progressively access each from of treatment. Treatment pathways vary according to individual needs and circumstances. See Michelle M Telfer et al, *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents* (version 1.4, The Royal Children's Hospital Melbourne, 2023) 5.

[6] Queensland Health, *Independent Review of Stage 1 and Stage 2 Hormone Therapies in Queensland's Public Paediatrics Gender Services* (Web Page, 30 July 2025) <https://www.health.qld.gov.au/research-reports/reports/review-investigation/hormone-therapies-review>.

Treatment Guidelines for Trans and Gender Diverse Children and Adolescents,[7] and with developing new national guidelines.[8]

In this piece I first briefly set out the backdrop of events which have led to these reviews, before considering the context and scope of each. I then argue that while both inquiries reflect a shift toward a more structured framework for the delivery of gender-affirming care for minors — a development with the potential to support greater clarity and consistency — the NHMRC review provides a more promising foundation for coherent reform. By promoting nationally consistent, evidence-based clinical guidance, the NHMRC process may help to clarify standards of care, reduce legal uncertainty for clinicians and their patients, and insulate treatment decisions from political criticism. In contrast, the Queensland review may ultimately contribute to jurisdictional inconsistency and fragmentation in clinical standards across the country.

II BACKGROUND

Questions about whether, and in what circumstances, minors and their parents can consent to gender-affirming treatment have been extensively litigated in Australian courts over the past two decades.[9] A number of decisions have clarified the role of the courts in these treatment decisions, with a key development being the recognition that, in certain circumstances, gender-affirming treatment could be provided to minors without court involvement.[10] In the clinical context, the *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents* were developed and published by clinicians at the Royal Children's Hospital Gender Service in Melbourne in 2018,[11] and have since informed the provision of care at all Australian paediatric gender services.[12]

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[7] Telfer et al (n 5).

[8] Mark Butler, 'Health Care for Trans and Gender Diverse Australian Children and Adolescents' (Media Statement, 31 January 2025) <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/health-care-for-trans-and-gender-diverse-australian-children-and-adolescents>.

[9] See, eg, Malcolm K Smith, 'The Requirement for Trans and Gender Diverse Youth to Seek Court Approval for the Commencement of Hormone Treatment: A Comparison of Australian Jurisprudence with the English Decision in Bell' (2022) 31(1) *Medical Law Review* 47; Aidan Ricciardo, 'Minors' Capacity to Consent to Puberty Supressing Treatment' (2022) 38(1) *Journal of Professional Negligence* 38, 39; Wolf (n 1).

[10] See, eg, *Re Jamie* (2013) 278 FLR 155; *Re Kelvin* (2017) 57 Fam LR 503; *Re Matthew* [2018] FamCA 161; *Re Imogen (No 6)* (2020) 61 Fam LR 344; *Re A* (2022) 11 QR 1.

[11] Telfer et al (n 5).

[12] AusPATH and Transcend Australia, *Briefings on Trans Healthcare: Responding to the Cass Review's Recommendations* (Report, 2024) 19.

However, despite these developments, clinical and legal uncertainty has persisted.

Meanwhile, events in the United Kingdom ('UK') from 2020 onwards significantly shaped discourse in Australia. In *Bell*, the English High Court held that children under the age of 16 were unlikely to be competent to consent to puberty-suppressing treatment.[13] The judgment recommended that applications be made to the court before such treatment could proceed.[14]

Although the English High Court's decision in *Bell* was ultimately overturned and was never binding in Australia,[15] it attracted significant attention and led some Australian health services to take a more cautious approach to providing gender-affirming treatment to minors. In Western Australia, for example, the Perth Children's Hospital initiated a review of its Gender Diversity Service in response to the decision in *Bell*.[16] During the review period, the hospital adopted a practice of requiring court authorisation before providing gender-affirming treatment, even in cases where Australian law clearly did not mandate court authorisation as a procedural safeguard (ie, the Hospital required court authorisation even where the minor was '*Gillick* competent' *and* their parents consented to the treatment).[17]

On appeal, the English Court of Appeal overturned the first-instance *Bell* decision, holding that it was inappropriate for the High Court to issue generalised guidance on minors' capacity to consent to gender-affirming treatment.[18] The Court of Appeal noted that such guidance was inconsistent with Lord Scarman's observations in *Gillick v West Norfolk and Wisbech Area Health Authority*, which cautioned against determining capacity by reference to a 'judicially fixed age limit'.[19] The appellate decision affirmed that questions of competence should be determined on a case-by-case basis by clinicians, consistent with the *Gillick* test.[20]

During the course of the *Bell* litigation, the National Health Service in England commissioned the *Independent Review of Gender Identity Services for Children and Young People*, led by Dr Hilary Cass (the 'Cass Review'). The final report, released

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[13] *Bell* (n 2) [127].
[14] Ibid [148]–[152].
[15] *Bell Appeal* (n 2).
[16] *Re G2* [2021] FCWA 98, [26]–[30].
[17] Ibid. Per *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 (*'Gillick'*), a minor becomes competent to make a particular healthcare decision for themselves when they display sufficient emotional maturity and intelligence to fully understand the proposed treatment.
[18] *Bell Appeal* (n 2) [91].
[19] Ibid [88], quoting *Gillick* (n 17) 186–8.
[20] *Bell Appeal* (n 2) [76]–[80].

in early 2024, recommended changes to the structure and delivery of gender identity health services for minors in the UK. Key recommendations included the establishment of regional multidisciplinary services and a more cautious approach to the use of puberty suppression and gender-affirming hormones, particularly outside research settings.[21] While the Cass Review focused only on the UK context, its recommendations nevertheless ignited debate in Australia, where questions were raised about their applicability in local health frameworks.

The Australian Professional Association for Trans Health ('AusPATH') and Transcend Australia noted that many of the Cass Review's recommendations reflect practices which are already embedded within Australian paediatric gender services.[22] Indeed, Australian clinics operate with reference to national standards of care, with multidisciplinary teams that provide holistic, individualised care.[23] Many Australian clinicians and researchers have contended that the Cass Review should not be used to guide care for trans young people in Australia, including in a recent article which argues that the Cass Review 'does not give credible evidence-based guidance':[24]

> The Cass Review's internal contradictions are striking. It acknowledged that some trans young people benefit from puberty suppression, but its recommendations have made this currently inaccessible ... It found no evidence that psychological treatments improve gender dysphoria, yet recommended expanding their provision. It found that NHS provision of [gender-affirming medical treatment] was already very restricted, and that young people were distressed by lack of access to treatment, yet it recommended increased barriers ... It dismissed the evidence of benefit from [gender-affirming medical treatment] as "weak", but emphasised speculative harms based on weaker evidence. The harms of withholding [gender-affirming medical treatment] were not evaluated. The Review disregarded studies observing that adolescents who requested but were unable to access [gender-affirming medical treatment] had poorer mental health compared with those who could access [it]. Despite finding that detransition and regret appear uncommon, the Review's recommendations appear to have the goal of preventing regret at any cost.[25]

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[21] *Cass Review* (n 3) 20–45.
[22] AusPATH and Transcend Australia (n 12).
[23] Ibid 2; Telfer et al (n 5).
[24] Julia K Moore et al, 'Cass Review Does Not Guide Care for Trans Young People' (2025) 223(7) *Medical Journal of Australia* 331, 334.
[25] Ibid 331.

After the Interim Report of the Cass Review was released, the New South Wales ('NSW') Ministry of Health commissioned the independent Sax Institute to update an earlier 'Evidence Check' which reviewed international and national evidence on the effectiveness and safety of gender-affirming treatment for minors. Released in 2024, the Sax Institute's updated report concluded that while the overall quality of evidence remains limited, the new evidence 'reinforced' previous findings that puberty-suppressing treatment was generally 'safe, effective and reversible'.[26] In relation to feminising or masculinising gender-affirming hormone therapy ('GAHT'), similar limitations were observed in the evidence, but the Sax Institute noted that the 'studies reporting positive mental health outcomes following GAHT outnumber those with neutral or negative findings' and that 'serious adverse outcomes associated with GAHT are rare'.[27]

The brief context outlined in this Part indicates that tensions around minors' access to gender-affirming treatment in Australia have not developed in isolation, but have been shaped by court proceedings, professional discourse and formal reviews. It is against this backdrop that the two Australian reviews announced in 2025 must be situated and understood.

III QUEENSLAND REVIEW

A *Political and Policy Background*

In October 2024, Queensland held a state election that brought a change of government, with the Queensland Liberal National Party ('LNP') forming government. In the period leading up to the state election, the LNP adopted an increasingly critical stance on the provision of gender-affirming care to young people. This was evident both in formal party resolutions and in statements made by senior figures.

At the party's annual convention in June 2024, an 'overwhelming majority' of party members voted in favour of a motion to ban the use of puberty blockers for children and adolescents.[28] The resolution signalled strong sentiment within the party membership, but during the 2024 election campaign itself, the LNP did not release a comprehensive policy platform on gender-affirming care. When asked

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[26] Sax Institute, *Evidence for Effective Interventions for Children and Young People with Gender Dysphoria: Update* (Evidence Check Report, February 2024) 10.
[27] Ibid 11.
[28] Madura McCormack and Taylah Fellows, 'LNP Convention Day 1: Lawrence Springborg Eyes Likely Election Win', *Courier Mail* (online, 6 July 2024) <https://www.couriermail.com.au/news/queensland/qld-politics/lnp-convention-day-1-lawrence-springborg-eyes-likely-election-win/news -story/f1909f7cdfa3fc316b22078978ee0023>.

by media outlets, the party declined to clarify whether it would impose a ban on puberty blockers or outline the extent of any proposed restrictions.[29]

Earlier, in 2023, LNP frontbencher Tim Nicholls (then Opposition Health Minister) raised concerns in Parliament about puberty-suppressing treatment and the provision of gender-affirming care generally.[30] His comments suggested concern that gender-affirming care was being overused or insufficiently monitored,[31] and foreshadowed later party positions when he became the Health Minister following the LNP's election victory.

By early January 2025, the new LNP government announced that Tim Nicholls had directed Queensland Health to halt works relating to an expansion of its paediatric gender services.[32] The expansion plans were underway as part of actioning the recommendations from a 2024 independent review delivered to the previous Labor government. That review was commissioned as an external clinical service evaluation of the Queensland Children's Gender Service ('QCGS'). Conducted by an independent multidisciplinary panel, the evaluation examined governance, clinical pathways, data and outcomes against national and international guidelines.[33] The panel found QCGS care to be safe, evidence-based and consistent with current guidelines.[34] It found 'no evidence of children, adolescents or their families being hurried or coerced into making decisions about medical intervention',[35] and described a typical caseload in which roughly one-third of assessed patients are discharged without the need for medical treatment, one-third are undergoing further clinical management and assessment, and one-third receive puberty blockers or gender-affirming hormones with ongoing support.[36] The report made 25 recommendations, including staffing increases and the development of a statewide networked service to improve access and reduce wait times.[37] The (then) Labor government

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[29] Ben Smee and Andrew Messenger, 'David Crisafulli Faces Questions About LNP's Transgender Plans After Party Official's Email Revealed', *The Guardian* (online, 10 October 2024) <https://www.theguardian.com/australia-news/2024/oct/09/david-crisafulli-lnp-transgender-queensland-state-election>.
[30] Queensland, *Parliamentary Debates*, Legislative Assembly, 13 June 2023, 1780–5 (Tim Nicholls).
[31] Ibid 1784–5.
[32] Jordan Hirst, 'Queensland Government Stops Expansion of Gender Service', *QNews* (online, 7 January 2025) <https://qnews.com.au/queensland-government-stops-expansion-of-gender-service/>.
[33] Queensland Health, *Queensland Children's Gender Service: External Clinical Service Evaluation* (Report, July 2024).
[34] Ibid 5–11.
[35] Ibid 7.
[36] Ibid 6–7.
[37] Ibid 12–16.

accepted the evaluation and announced the implementation of its recommendations,[38] though under the new government this work was stopped in accordance with Tim Nicholl's directive to Queensland Health in early January 2025.[39]

Just weeks after that directive, in late January 2025, the Queensland Government announced that it would commission an independently-led 'broad review of the evidence for Stage 1 and Stage 2 hormone therapies for children in Queensland' (the 'Queensland Review').[40] The Government's media release did not make reference to the Sax Institute's updated 'Evidence Check' furnished to the NSW Ministry of Health the year prior, but noted that 'Queensland has not yet undertaken its own review of the evidence' relating to puberty suppression and gender-affirming hormonal treatment for minors.[41] In the same announcement, the Queensland Government issued an 'immediate pause' on Queensland Health's intake of new patients under 18 years for puberty suppression and gender-affirming hormonal treatment. Following judicial review, the Queensland Supreme Court set aside that decision to impose the pause on new patients,[42] although the pause has since been reinstated under a new ministerial direction.[43]

B *Scope of the Queensland Review*

The Queensland Review is led by an independent external consultant — Professor Ruth Vine — and a panel of reviewers with varied expertise in psychiatry, endocrinology, ethics, law, and social work.[44] The reviewers have been tasked with 'assessing the current evidence base and ethical considerations for the use

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[38] Shannon Fentiman, 'Independent Evaluation Finds Queensland Paediatric Gender Services Safe and Evidence-Based' (Media Statement, 19 July 2024) <https://statements.qld.gov.au/statements/ 100859>.
[39] Hirst (n 32).
[40] Tim Nicholls, 'Independent Review into Puberty Blockers' (Media Statement, 28 January 2025) <https://statements.qld.gov.au/statements/101903>.
[41] Ibid.
[42] *AB v Chief Executive of Queensland Health* [2025] QSC 277.
[43] Minister for Health and Ambulance Services (Qld), *Treatment of Gender Dysphoria in Children and Adolescents with Hormone* Therapy (QH-MD-002, 28 October 2025).
[44] Queensland Health (n 6). It is worth noting that the Queensland Government has faced criticism for not including on the review panel anyone with lived experience, nor anyone with clinical expertise relating to the provision of gender-affirming care: see Freya Kerwick, *Queensland Trans Health Review Fact Sheet* (Fact Sheet, Trans Justice Project, 30 June 2025) <https://transjustice.org.au/wp-content/uploads/2025/06/Queensland-Trans-Health-Review-Fact-Sheet.pdf> 5.

of puberty suppression (Stage 1) and gender-affirming (Stage 2) hormones for children and adolescents ... in Queensland's public hospital system'.[45]

The Terms of Reference set out that the Queensland Review's scope includes consideration of:

- the quality and outcomes of available medical and clinical evidence for the use of Stage 1 and Stage 2 hormones for children and adolescents with gender dysphoria; …
    - the strength of the evidence base for using … hormones to treat gender dysphoria;
    - the ethical considerations and safeguards applied when prescribing and administering … hormones;
    - the legal and ethical considerations and social impacts on clinical practice and decision-making and informed consent;
    - the psychological, psycho-social and biological management including for Stage 1 and Stage 2 hormones, and whether these are considered to be reversible or irreversible; and
    - the short, medium and longer-term effects of Stage 1 and Stage 2 hormones [for] children and adolescents …
- models of governance to appropriately monitor access and oversight if the use of Stage 1 and Stage 2 hormones are endorsed for children and adolescents with gender dysphoria; and
- mechanisms for ongoing clinical audit, long term follow-up, data reporting and research if the use of Stage 1 and Stage 2 hormones are endorsed for children and adolescents with gender dysphoria.[46]

[45] Queensland Health, 'Terms of Reference: Independent Review of the Evidence Base and Advice Regarding Policy Options for the use of Puberty Suppression (Stage 1) and Gender Affirming (Stage 2) Hormones for Children and Adolescents with Gender Dysphoria in Queensland's Public Hospital System' (Terms of Reference, 2025) <https://www.health.qld.gov.au/__data/assets/pdf_file/ 0033/1433697/Terms-of-Reference.pdf> 1 ('Queensland Review Terms of Reference').

[46] Ibid 1–2.

The Queensland Review has been directed to consider existing literature, as well as national and international reviews, including the Cass Review, the Sax Institute 'Evidence Check', and an evidence brief published by the New Zealand Ministry of Health in 2024 on the 'Impact of Puberty Blockers in Gender-Dysphoric Adolescents'.[47] It was also directed to conduct interviews with a sample of stakeholders and to invite written submissions.[48] The Terms of Reference expressly set out that the Queensland Review is 'not designed or intended to result in recommendations regarding the use of Stage 1 or Stage 2 hormones for children and adolescents with gender dysphoria'.[49] Rather, it will provide written advice that 'may inform' government policy and implementation decisions.[50] The final report is due to the Director-General of Queensland Health by 30 November 2025.[51]

IV NATIONAL REVIEW

On 31 January 2025 — just three days after the Queensland Review was announced — the Australian Government requested the NHMRC to develop new national clinical practice guidelines for the care of trans and gender diverse children and adolescents with gender dysphoria.[52] Amongst its other functions, the NHMRC develops and approves guidelines that address a wide range of topics in health and medicine, including specific areas of clinical practice. However, this represents the first time that the NHMRC has undertaken guideline development in this area. The *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents* (ie, those guidelines which have come to inform the provision of care in all Australian paediatric gender services) were developed by clinicians and have not been approved by the NHMRC.[53]

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[47] New Zealand Ministry of Health, *Impact of Puberty Blockers in Gender-Dysphoric Adolescents* (Evidence Brief Report, November 2024).

[48] The submission period closed on 29 July 2025. The questions posed by the Queensland Review (accompanied by the UWA Centre for Health Law and Policy's responses to those questions) can be seen in Aidan Ricciardo et al, Submission to Queensland Health, Independent Review of 'Stage 1' and 'Stage 2' Hormone Therapies in Queensland's Public Paediatrics Gender Services (21 July 2025) <https://api.research-repository.uwa.edu.au/ws/portalfiles/portal/532593650/CHLP_submission_to_Queensland_Health_s_independent_review_of_gender_affirmation_therapies_for_young_people.pdf>.

[49] Queensland Review Terms of Reference (n 45) 2.

[50] Ibid 2–3.

[51] Ibid 4.

[52] Butler (n 8).

[53] NHMRC, *National Clinical Practice Guidelines for the Care of Trans and Gender Diverse People Under 18 with Gender Dysphoria* (2025) <https://www.nhmrc.gov.au/health-advice/guidelines-care-trans-and-gender-diverse-people>, discussing Telfer et al (n 5).

The new guidelines are intended to provide a clear and nationally consistent framework, supported by rigorous evidence review and consultation. The guidelines will be developed in accordance with the NHMRC's Standards for Guidelines,[54] using the GRADE approach ('an internationally recognised approach to rate the certainty of evidence and the strength of recommendations').[55] These frameworks require systematic appraisal of the available evidence, transparent and documented decision-making, and structured management of conflicts of interest.[56] The NHMRC process also mandates the establishment of a multidisciplinary guideline development committee, with members appointed on the basis of their varied clinical and professional expertise, alongside representatives with lived experience and guideline end-users.[57]

The published timeline spans over more than three years from the date the process was announced. Evidence reviews will take place from September 2025 to September 2026, with interim recommendations on puberty blockers to be developed between February and August 2026. Further development of recommendations will continue to September 2027, with public consultation planned for September to November 2027. The guidelines are scheduled for release in March 2028.[58]

V COMPARATIVE ASSESSMENT OF THE TWO REVIEW PROCESSES

This Part compares the Queensland Review and the NHMRC process, focusing on their framing, institutional authority, and implications for policy coherence. This comparative assessment highlights how the two processes differ in scope, perceived legitimacy, and capacity to provide effective guidance on gender-affirming care for minors. The analysis below demonstrates that the NHMRC process, by virtue of its scope and institutional authority, is more likely to resolve existing tensions, whereas the Queensland Review may further compound them.

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[54] 'Standards for Guidelines', *NHMRC* (Web Page, 2016) <https://www.nhmrc.gov.au/guidelinesforguidelines/standards>.
[55] 'Guidelines', *NHMRC* (Web Page) <https://www.nhmrc.gov.au/guidelines>.
[56] Ibid.
[57] *National Health and Medical Research Council Act 1992* (Cth) s 39.
[58] NHMRC, *National Clinical Practice Guidelines for the Care of Trans and Gender Diverse People Under 18 with Gender Dysphoria,* 'Guideline Development' (Web Page, 2025) <https://www.nhmrc.gov.au/health-advice/guidelines-care-trans-and-gender-diverse-people/guideline-development>.

A *Framing and Objectives*

The two reviews are framed differently and serve different policy functions. The Queensland Review is an evidence review focused on one state system, expressly not designed to produce recommendations on the use of gender-affirming treatment for minors. The NHMRC process is a guideline development exercise directed to producing national clinical practice recommendations that will standardise care for minors across Australia. On purpose alone, the NHMRC process is better positioned to answer the questions that have driven much of the uncertainty and public debate — what clinicians should do, and on what evidentiary basis — in a way that is nationally coherent.

The Queensland Review sets out broad questions about evidence quality, ethics, safeguards, informed consent and governance, and will furnish information to government. That may be useful for state policy and service planning, but without the mandate to make clinical recommendations it is unlikely to resolve the questions that clinicians, health services, and consumers most need answered.

B *Authority and Perceived Legitimacy*

The NHMRC is a statutory authority often tasked with guideline development and approval as one of its core functions, operating within a well-established framework for evidence appraisal, conflict of interest management and robust public consultation.[59] That institutional setting carries procedural legitimacy that has real potential to create much-needed clinical and legal certainty in this context. The Queensland Review body's independence and process may be sound, but as a jurisdiction-specific ad hoc review body it lacks the same system-level authority to settle standards of care. In this sense, the NHMRC review is positioned to provide the most authoritative and enduring basis for clinical decision-making and policy development.

The relative legitimacy of the Queensland Review may also be undermined by the political circumstances surrounding its announcement. At the threshold, the necessity of the exercise is doubtful, and the sequence of events leading to its announcement raise questions about the Government's motivation for commissioning a review. As explained in Part III, Queensland Health had only recently received an external clinical evaluation which concluded that care was safe, evidence-based and consistent with current guidelines, and which set out recommendations to improve capacity and access. In early January 2025, the

[59] NHMRC (n 54).

Government announced that it had paused delivery of those recommendations. Then, in late January 2025, it announced the Queensland Review and concurrent pause on the intake of new patients. In this instance, the policy shift (ie, pausing the delivery of recommendations and the intake of new patients) *preceded* the evidence checking exercise (ie, the Queensland Review). This sequence suggests that the Queensland Government may be treating the Queensland Review as a proxy for a pre-determined position rather than a process to genuinely resolve existing uncertainty. This suggestion is strengthened when considering that the Queensland Review's endpoint is only advisory in nature — a written report that 'may inform' policy and implementation decisions,[60] with the Terms of Reference noting that it is 'not designed or intended to result in recommendations' about the use of hormonal treatment.[61]

C *Consistency and Certainty*

Both the Commonwealth and state governments play a significant role in shaping health policy.[62] In the provision of gender-affirming healthcare for minors, states are typically responsible for service delivery and are closest to operational issues, but the legal, clinical and ethical questions that arise transcend jurisdictional boundaries. Indeed, it is acknowledged that many areas of health policy require national coherence, which can be achieved through mechanisms such as NHMRC-led guideline development, national frameworks, and intergovernmental agreements that set shared standards across jurisdictions.[63] In such contexts, clarity and consistency are essential to ensure equitable access, minimise jurisdictional variability, and support clinical confidence. Gender-affirming healthcare for minors exemplifies this need and represents a classic case for national stewardship.

The guidelines to be developed through the NHMRC process have real potential to promote consistent practice and to be persuasive in resolving any future clinical or legal uncertainties. This national approach is also well-aligned with the nature of the policy issue; clinical questions about gender-affirming care for minors are not unique to any single Australian state, and their resolution requires shared standards rather than jurisdictional patchwork. Citing this reason, the

[60] Queensland Review Terms of Reference (n 45) 2.
[61] Ibid.
[62] Karen Wheelwright, 'Commonwealth and State Powers in Health: A Constitutional Diagnosis' (1995) 21(1) *Monash University Law Review* 53, 57–71.
[63] Ibid 53–7.

Commonwealth Health Minister noted the following in a press conference after announcing the NHMRC review:

> I've indicated to [the Queensland Health Minister] that I don't think it would be appropriate for Queensland to continue with their stated intention to undertake an evidence review in this area of care. These issues should be nationally consistent, and in my view, should be driven by the preeminent authority, which is the NHMRC.[64]

Despite this communication, the Queensland Government opted to proceed with its review. The Queensland Review is, therefore, a narrow single-jurisdiction exercise that operates in parallel to the national NHMRC process. If the Queensland Government relies on the Queensland Review to develop policy that diverges from future national guidance, it would undermine the objective of a coherent national framework. Conflicting state and national positions would not only entrench inconsistency but also expose clinicians and patients to heightened legal and clinical uncertainty.

Given the nature of the issues and the risks of fragmented state policy, the NHMRC process is best placed to provide the coherent framework that this area of care demands. Any government action taken on the basis of the Queensland Review could represent a departure from the opportunity to achieve national consistency.

VI Conclusion

The two concurrent review processes — the Queensland Review and the NHMRC process — reflect divergent approaches to addressing uncertainty surrounding minors' access to gender-affirming care in Australia. While the Queensland Review may generate useful jurisdiction-specific insights, its advisory nature, political framing, and lack of a mandate to make clinical recommendations limit its capacity to provide the kind of authoritative guidance required to stabilise practice. In contrast, the NHMRC process is well-placed to deliver national, evidence-based guidelines.

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[64] Mark Butler, 'Minister for Health and Aged Care: Press Conference on Health Care for Trans and Gender Diverse Children and Adolescents, and Botox' (Transcript, 31 January 2025) <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/minister-for-health-and-aged-care-second-press-conference-31-january-2025>.

Minors' access to gender-affirming healthcare involves a range of complex clinical, ethical, and legal considerations. Fragmented approaches risk creating further uncertainty for clinicians in an already fraught environment, and access to appropriate treatment should not depend on jurisdictional happenstance. National guidelines offer a pathway to address the existing challenges by providing a clear and consistent foundation for clinical practice and access to care.