The potential conflict between a patient’s best chance of walking out of a hospital alive and that patient’s right to refuse medical treatment (including blood transfusions) is a confronting prospect. The situation becomes particularly complicated when a minor or a person without capacity is involved.

In June 2012, the South Australian Supreme Court ordered a blood transfusion for a 4 year old girl, whose parents had refused their consent to the transfusion on religious grounds. Given the weight of the issues involved and the fact they must often be tackled in emergency situations, one might query whether the current situation (which in Queensland involves 3 separate pieces of legislation) is ideal.

There are 3 main scenarios in which a refusal of a blood transfusion may arise. These are:

- By an adult who has the legal capacity to consent to medical treatment;
- By an adult who does not have the legal capacity to consent to medical treatment; and
- By parents who refuse a blood transfusion on the part of their child.

**ADULT WITH CAPACITY**

Competent adults may refuse a blood transfusion (or other medical treatment). In this scenario health practitioners will need to satisfy themselves that the adult patient has the capacity to make the decision. Another key issue will be ensuring that the patient is provided with relevant information about the risks of not having the blood transfusion and alternative management strategies.

**ADULT WITHOUT CAPACITY**

Emergency treatment (including a blood transfusion) may be performed without consent. The legislation in Queensland indicates that a blood transfusion for an adult with impaired capacity may be carried out without consent if the adult’s health provider reasonably considers that the health care should be carried out urgently to meet an imminent risk to the adult’s life or health and there is no objection to the health care in an advance health directive.

**PARENTS OF A CHILD REFUSE BLOOD**

The final scenario is where parents of a child refuse to consent to a blood transfusion on behalf
of their child. In these circumstances transfusions may (subject to satisfaction of the conditions in the *Transplantation and Anatomy Act*) be given to children without parental or guardian consent where the transfusion is necessary to preserve the life of the child.

The refusal of a blood transfusion raises numerous legal issues for health practitioners and hospital staff often in emergency situations. This is especially the case if the patient is an incapacitated adult.

This is an area of health law that would benefit from revision and clarification by the Parliament.

1 Hannah Silverman, ‘Judge forces Jehovah’s Witness parents to allow transfusion for daughter with cancer’, *The Advertiser (online)*, 1 June 2012.

2 *Powers of Attorney Act 1998* (Qld); *Guardianship and Administration Act 2000* (Qld); and *Transplantation and Anatomy Act 1979* (Qld)

3 Legal capacity “is the ability of a patient to understand the nature and effect of the proposed treatment.” (see Ben White, Fiona McDonald and Lindy Willmott (eds), *Health Law In Australia* 2010) 98.

4 *Transplantation and Anatomy Act 1979* (Qld) s 20.