

Rationalist Society of Australia

Promoting reason since 1906



GENITAL AUTONOMY

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Preamble

The Rationalist Society of Australia Inc. (RSA) seeks to promote a pluralistic, multicultural and secular Australia. Government policies and laws should be based on evidence, reason and compassion, not religious beliefs. Everyone should be free to follow their own religious or non-religious worldview, provided that doing so does not harm or unnecessarily restrict others.

The RSA's *10 Point Plan for a Secular Australia*¹ includes a number of policy principles that have informed the positions adopted in this statement:

- Government policies should be based on evidence, reason and compassion, and protect the human rights of all Australians.
- Everyone should be free to choose and hold their own religious or non-religious worldviews, provided they do not impose such views on others, and provided practices associated with such worldviews do no harm.
- Religious institutions should not be permitted to exempt themselves from the law of the land. Canon law must not take precedence over Australian law.
- Decisions about children's healthcare should be based on evidence-based medicine, not the religious worldviews of their parents.

The RSA recognises the inherent right of all human beings to security of person, in particular their right to physical and mental integrity and bodily autonomy. The RSA rejects all non-consensual, medically unnecessary genital cutting or modifications, and calls upon the medical community and state and federal governments to educate the public of the harms of these procedures, and to change the law to ensure all children are protected from genital mutilation.

Introduction

Male circumcision (sometimes referred to as 'male genital cutting' or 'male genital mutilation') is a surgical procedure to partially or totally remove the foreskin of the penis, the sheath of skin that covers and protects the head (or glans) of the penis. In Australia, 10-20% of newborn boys are circumcised.² Most of these circumcisions are done to satisfy parental preference rather than out of medical necessity.

Children with intersex variations are born with physical sex characteristics including genitals, gonads and chromosome patterns that do not conform to medical norms for female or male bodies.³ There is great diversity amongst intersex variations, which may not always be

apparent at birth, and these variations may reveal themselves at the onset of puberty or later in life. Some intersex people may have atypical external genitalia, whereas others may not. Intersex genital modification (sometimes referred to as 'genital normalising surgery', 'sex reassignment', 'intersex genital cutting' or 'intersex genital mutilation') refers to surgical and hormonal treatments to alter the physical sex characteristics of an intersex child so that the child may appear typically male or typically female. The statistics on the prevalence of intersex variations vary greatly, in part due to the lack of consensus on what constitutes

an intersex variation. However, it is estimated that 1-2% of people are born with intersex variations.⁴ According to the Australasian Paediatric Endocrine Group, intersex variations “range from 1 in 125 boys for a mild variant, to 1 in 4,500 babies where the genitalia appear significantly ambiguous at birth such that the sex of the infant is unable to be immediately determined.”⁵

The RSA maintains the view that non-consensual, medically unnecessary male circumcision and intersex genital modification constitute genital mutilation, and should be condemned. Australian society does not accept female genital mutilation to suit the cultural or religious preferences of parents, and likewise should not accept male circumcision or intersex genital modification for these reasons.

Genital mutilation is harmful

Female genital mutilation is condemned and outlawed in Australia because its harms are widely recognised. However, the harms associated with medically unnecessary male circumcision are often trivialised, because the functions of the male foreskin and the deleterious effects of non-therapeutic male circumcision are not widely understood. The harms of intersex genital modification are also trivialised due to the medicalisation of these procedures and the absence of knowledge about intersex people in the community.

Male circumcision

Male circumcision removes 30-50% of the penile skin, including the foreskin tissue and its specialised functions:

- The foreskin is the most sensitive part of the penis. It is erogenous tissue that is highly sensitive to sexual stimulation.⁶
- The foreskin provides adequate skin to cover the shaft of the penis during an erection.⁷ If circumcision removes too much skin it can result in painful erections and a shortened erectile length.⁸
- The foreskin facilitates the insertion of the penis into the vagina, and circumcision increases the force required for penetration tenfold.⁹
- During sex, the gliding action of the foreskin reduces friction, which in turn reduces vaginal dryness. Women are significantly more likely to experience vaginal dryness, and significantly less likely to orgasm with circumcised partners.¹⁰ The gliding action is also very pleasurable for men, which might be due to the complex sensory interaction that occurs between the head of the penis and the foreskin.¹¹
- The inner layer of the foreskin is a mucous membrane that plays a role in immune responses. It contains immune cells that attack invading pathogens, and specialised glands that produce a variety of antimicrobial compounds.¹²
- The outer layer of the foreskin protects the head of the penis as well as the inner layer of the foreskin. This decreases chaffing, and helps prevent external irritation and contamination.¹³

In addition to complications relating to loss of function, complications of the circumcision procedure itself include scarring, infection, blood loss (haemorrhage), narrowing of the opening of the urethra (meatal stenosis), adhesions between the shaft skin and the head of the penis (preputial adhesions/skin bridges), buried/concealed penis resulting from overzealous removal of the shaft skin and in rare cases, penile amputation or death.¹⁴

Intersex genital modification

Often at the behest of their parents, intersex children endure genital modification procedures to ‘correct’ or eliminate ambiguities in their genitalia so they may typically resemble a female or male. These ‘normalising’ procedures are performed for non-medical reasons, usually to alleviate parental concern that the child might suffer psychologically or experience social ostracism.¹⁵

Intersex genital modification procedures pose various physical and psychological harms. Narrowing of the vagina (vaginal stenosis), and reduced sexual pleasure and scarification are complications of some genital modification procedures.¹⁶ These procedures often include various hormonal therapies in order to facilitate optimal sex rearing, although hormone therapies may have negative effects on fertility or metabolism, or pose psychological harm to intersex people.¹⁷

Some intersex adults who have undergone genital modification as children or adolescents have expressed negative emotions about undergoing such procedures, and dissatisfaction with their overall genital appearance.¹⁸ Some have also conveyed subsequent mistrust of the medical profession and have reported disappointment with the lack of information provided to them about their intersex variations.¹⁹ Dissatisfaction with the sex assigned or gender dysphoria may also occur later in life, causing some adults with intersex variations to undergo gender affirmation procedures, although this appears to be rare.²⁰

Healthcare should address the needs of the patient as opposed to the patient’s recorded gender; and all medically unnecessary intersex genital modification procedures should only be performed on individuals who have consented to the procedures themselves.

Medical attitudes

Peak medical bodies do not recommend male circumcision

The Royal Australasian College of Physicians,²¹ Canadian Paediatric Society,²² German Association of Paediatricians,²³ and Royal Dutch Medical Association²⁴ have issued policy statements outlining why they do not recommend routine infant circumcision. The Royal Dutch Medical Association has also called on human rights groups to help bring medically unnecessary circumcision to an end.²⁵

In a 2012 report, the American Academy of Pediatrics (AAP) stated that it also does not recommend routine infant circumcision; however, it claimed the benefits of circumcision outweigh the risks.²⁶ This claim has been rejected by the international medical community, with eminent doctors from around the world charging the AAP with “cultural bias” and concluding that “non-therapeutic circumcision of underage boys in Western societies

has no compelling health benefits, causes postoperative pain, can have serious long-term consequences, constitutes a violation of the United Nations' Declaration of the Rights of the Child, and conflicts with the Hippocratic oath: *primum non nocere*. First, do no harm."²⁷

Non-consensual, medically unnecessary male circumcision and intersex genital modification violate medical ethics

Non-consensual, medically unnecessary male circumcision and intersex genital modification violate medical ethics and the first maxim of medical practice: first, do no harm. It is well established in medical ethics that informed consent of a patient is required wherever it is possible, and that invasive surgical procedures should not be performed on non-consenting minors unless they are medically necessary.

Parental consent is insufficient to support medically unnecessary male circumcision or intersex genital modification, because parental rights do not include the right to consent to harmful procedures that are not in the child's best interests. Children are rights holders and enjoy these rights independently from their parents, and should be allowed to choose or refuse to undergo cosmetic alterations to their own bodies when they are able to give their informed consent.

International human rights law

Non-consensual, medically unnecessary male circumcision and intersex genital modification violate human rights

Human rights are international legal norms, which transcend social, cultural, national and religious differences.²⁸ Article 5 of the Vienna Declaration and Programme of Action emphasises that "all human rights are universal, indivisible, and interdependent and interrelated," which must be treated equally, "on the same footing, and with the same emphasis."

Australia has international obligations to respect, protect and fulfil human rights; and is a signatory party to several legally binding treaties, including the International Covenant on Civil and Political Rights (ICCPR),²⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),³⁰ the Convention on the Rights of the Child (CROC),³¹ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).³²

It is definitively established under international law that female genital mutilation violates human rights.³³ Now, there is an emerging body of legal opinion that non-consensual, medically unnecessary male circumcision and intersex genital modification also violate universal human rights.³⁴ We maintain that all forms of non-consensual, medically unnecessary genital modification practices violate universal human rights.

The right to freedom from all forms of violence

Article 19(1) of the CROC provides the right of the child to freedom from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".³⁵ The right to freedom from all forms of violence

safeguards children's rights to bodily autonomy and physical and psychological integrity, and to equal protection under the law.³⁶ All forms of violence are preventable and threaten the enjoyment of the right to freedom from violence.³⁷

Non-consensual, medically unnecessary male circumcision and intersex genital modification constitute harmful practices. Many children who are victims of male circumcision suffer from post-traumatic stress disorder and other psychosexual problems.³⁸ Describing some forms of violent, harmful practices as legally or socially acceptable should never be used as a way "to erode the child's absolute right to human dignity and physical and psychological integrity."³⁹

All harmful practices, including non-consensual, medically unnecessary male circumcision and intersex genital modification, violate the child's right to freedom from all forms of violence, and must be condemned.

The right to security of person and bodily autonomy

Article 9 of the ICCPR provides the right to security of person.⁴⁰ The right to security of person safeguards and "protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained."⁴¹

Article 3(1) of the CROC provides that in all matters relating to children, "the best interests of the child shall be a primary consideration."⁴² The Committee on the Rights of the Child emphasises that children's evolving capacities "must be taken into consideration when the child's best interests and right to be heard are at stake."⁴³

Infants and small children enjoy the same rights equally, including the right "to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children."⁴⁴ All children are rights holders; they "are not the property of their parents and have interests that are separable to their parents."⁴⁵

Parents are free to raise their children according to their own cultural or religious beliefs, but children are entitled to protection from harmful practices prejudicial to their bodily autonomy and physical and mental integrity, including cultural and religious practices parents may favour.⁴⁶

The right to freedom of thought, conscience and religion

Article 18(1) of the ICCPR safeguards the right to freedom of thought, conscience and religion, including the freedom to choose one's own religion or belief and to manifest one's religion or belief "in worship, observance, practice and teaching."⁴⁷ The right to freedom of thought, conscience and religion "encompasses a broad range of acts," which extends to "ritual and ceremonial acts giving direct expression to belief."⁴⁸

Children also enjoy the right to freedom of belief, which is safeguarded by Article 14(1) of the CROC.⁴⁹ Parents may shape their children's upbringing based upon their own cultural and religious beliefs, but the manifestation of the right to religious freedom may be limited to protect the child's right to freedom of belief.⁵⁰

The right to freedom of thought, conscience, and religion "can never be legitimately invoked to justify the infliction of grave and often traumatic violations of a person's physical and

psychological integrity.”⁵¹ Subjecting a child to non-consensual religious male circumcision based on parental beliefs violates the right of the child to freedom of belief.⁵²

Australian society does not accept religious freedom as justification for female genital mutilation, and we maintain that religious freedom is also no justification for non-consensual, medically unnecessary male circumcision.

The right to the highest attainable standard of health

Article 12 of the ICESCR enshrines the right to the enjoyment of the highest attainable standard of health.⁵³ The right to health “is a fundamental human right indispensable for the exercise of other human rights”⁵⁴ and it includes sexual and reproductive health as well as the right to control one’s body.⁵⁵

Children are equally entitled to the right to health. Article 24(1) of the CROC provides the right to the enjoyment of the highest attainable standard of health and Article 24(3) emphasises that countries must “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”⁵⁶ Countries must also ensure the healthy development of the child and reduce the incidence of infant mortality.⁵⁷ The complications of non-consensual, medically unnecessary male circumcision and intersex genital modification vary and can prohibit healthy development. They also place children at avoidable risk of harm.⁵⁸

The international community must aid countries in order to progressively realise the right to health, and countries must continue to respect, protect and fulfil universal human rights throughout this process.⁵⁹ Global initiatives that enable male circumcision for its claimed population health benefits do so despite a lack of support from the international medical community and at the expense of human rights; vaccination programs and safe sex initiatives should instead be employed.⁶⁰

The right to health includes the right to access medicine; however, non-consensual, medically unnecessary male circumcision and intersex genital modification are neither medicine nor healthcare.⁶¹ Healthcare professionals must recognise the needs of patients, and offer treatment based upon these needs.⁶² In order to respect the rights of the child, medically unnecessary interventions must be postponed until the child is able to consent.⁶³

The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

Article 7 of the ICCPR provides the right to freedom from torture or cruel, inhuman or degrading treatment or punishment.⁶⁴ Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official

or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁶⁵

Countries must not breach a person’s absolute right to freedom from torture.⁶⁶ Acts that do not meet the scope of torture may be considered cruel, inhuman or degrading treatment or punishment, the distinction being the intent of the act and “the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted”.⁶⁷ Article 37(a) of the CROC guarantees the right of the child to freedom from torture or cruel, inhuman or degrading treatment or punishment.⁶⁸ This includes freedom from “all forms of physical or mental violence,” and “violence in the guise of treatment.”⁶⁹

Female genital mutilation violates the right to freedom from torture and ill treatment.⁷⁰ In 2016, the Special Rapporteur on Torture identified non-consensual, medically unnecessary intersex genital modification is likewise a form of torture and ill treatment.⁷¹

Since the medicalisation of harmful practices does not absolve the violation of human rights,⁷² we believe that non-consensual, medically unnecessary male circumcision also violates the right of the child to freedom from torture and ill treatment.

Bringing Australian law in line with international human rights law

In 1993, the Queensland Law Reform Commission concluded that non-therapeutic circumcision without the consent of the circumcised individual is unlawful under common law, and that it could be regarded as a criminal act under specific laws relating to assault and injury.⁷³ In 2012, the Tasmania Law Reform Institute recommended a legal prohibition on non-therapeutic, medically unnecessary male circumcision, with only limited and highly regulated exemptions for religious and cultural observance.⁷⁴

All Australian states and territories have criminalised all forms of medically unnecessary female genital cutting as female genital mutilation under their respective Crimes Acts.⁷⁵ Intersex genital modification is currently exempted from prohibition under these laws criminalising female genital mutilation.

By protecting only female children from medically unnecessary genital mutilation, state and territory laws violate the right of all children to freedom from discrimination and equal protection of the law.⁷⁶ We call for laws against female genital mutilation to be amended to extend equal protection to male and intersex children, and to fulfil Australian obligations to international human rights law.

Conclusion

Peak medical bodies do not recommend routine infant circumcision. The evidence shows that unless medically necessary, the surgical genital modification of any child, whether female, male or intersex, is harmful. Laws against female genital mutilation should be amended to extend the protections they currently afford to female children to male and intersex children as well.

Non-consensual, medically unnecessary male circumcision and intersex genital modifications run contrary to many points of the RSA’s *10 Point Plan for a Secular Australia*.

A secular, pluralistic and democratic Australia

Government policies should be based on evidence, reason and compassion, and protect the human rights of all Australians.

Medically unnecessary genital cutting is not reasonable or supported by medical evidence. Legislation regarding female genital mutilation currently discriminates on the basis of sex and sex characteristics because the legislation only applies to females. The law therefore fails to protect the wellbeing and human rights of male and intersex children, and thus fails to protect the human rights of all Australians.

Everyone should be free to choose and hold their own religious or non-religious worldviews, provided they do not impose such views on others, and provided practices associated with such worldviews do no harm.

When religious male circumcision is forced on children it violates the religious freedom of the child, and their right to freedom from violence and deliberately inflicted harm. It is already socially accepted that the religious beliefs of parents do not justify carrying out female genital mutilation; neither do such beliefs justify non-consensual religious male circumcision.

One law for all, with no recognition of parallel legal systems

Religious institutions should not be permitted to exempt themselves from the law of the land. Canon law must not take precedence over Australian law.

Some people view non-consensual male circumcision as being part of their religious law, but this should not take precedence over Australian law or Australia's human rights obligations. Currently there are no religious exemptions in Australian laws concerning female genital mutilation. The law should also criminalise male genital mutilation, and there should similarly be no religious exemption. Religious exemption for male genital mutilation would constitute a violation of the right to freedom from discrimination and equal protection of the law.

Children not to suffer because of the religious views of their parents

Decisions about children's healthcare should be based on evidence-based medicine, not the religious worldviews of their parents.

No organisational body of doctors in the Western world, and to our knowledge anywhere else in the world, recommends routine infant circumcision. Several have issued statements saying they do not recommend the practice, and some have called for an end to all non-consensual, medically unnecessary genital surgery. Despite claims of medical benefits from some doctors, all such claims are hotly debated in the medical literature, and the clear international medical consensus is that any apparent benefits to circumcision are not sufficient to warrant performing it as a routine procedure on non-consenting minors. Evidence-based medicine indicates that all children should be able to grow up and decide for themselves if they want to consent to medically unnecessary surgical alterations of the most intimate part of their own bodies.

Recommendations

The RSA therefore recommends:

Recommendation 1

Non-consensual, medically unnecessary male circumcision should be condemned as male genital mutilation.

Recommendation 2

Non-consensual, medically unnecessary intersex genital modification should be condemned as intersex genital mutilation.

Recommendation 3

To facilitate an understanding of the distinction between therapeutic and non-therapeutic, medically unnecessary male genital cutting, only therapeutic removal of the male foreskin should be referred to as male circumcision in educational materials.

Recommendation 4

To facilitate an understanding of the distinction between therapeutic and non-therapeutic, medically unnecessary intersex genital alterations, only therapeutic intersex genital alterations should be referred to as intersex genital modifications in educational materials.

Recommendation 5

Laws criminalising female genital mutilation should be amended so they also protect male and intersex children from non-consensual, medically unnecessary male circumcision and intersex genital modification.

Recommendation 6

No religious exemptions should be made to laws banning non-consensual, medically unnecessary male circumcision and intersex genital modification, just as no religious exemptions are made to laws banning female genital mutilation.

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