

Protecting intersex people from harmful practices in medical settings: a new benchmark in the Australian Capital Territory

Morgan Carpenter

School of Public Health, University of Sydney, Sydney, Australia.

morgan.carpenter@sydney.edu.au

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Protecting intersex people from harmful practices in medical settings: a new benchmark in the Australian Capital Territory

Abstract:

People with innate variations of sex characteristics have long called for legislative protections from harmful practices in medical settings. In Australia, the journey towards enactment of reforms includes elaboration of a shared community platform, national inquiries, and growing support from community, human rights and clinical institutions. The Australian Capital Territory is the first jurisdiction to introduce and pass legislation. While enabling emergency medical treatment and treatments with personal informed consent, it provides for reporting and oversight of contested medical procedures, and criminal sanctions. The legislation promotes a shift towards supported decision-making. It is accompanied by significant investment in psychosocial support that promises to ensure cultural change and improvements to health outcomes.

Keywords: Intersex, variations of sex characteristics, differences of sex development, human rights, law reform

Introduction

Medical interventions including feminising surgeries, masculinising surgeries, sterilisations and hormone treatments, on infants, children and adolescents with innate variations of sex characteristics (also known as intersex traits or disorders/differences of sex development) were introduced from the 1930s, popularised from the 1950s, and persist today.¹ These practices are underpinned by gender stereotypes and ‘psychosocial rationales’, such as ideas that surgeries on children will promote social and familial integration. There is a lack of evidence for these beliefs.² In recent years, feminising surgeries have been described in Australia as ‘enhancing’ female genital appearance, while masculinising surgeries have been described as necessary to ensure that boys and men are capable of meeting a purportedly ‘functional’ norm of standing to urinate,³ yet clinicians have themselves expressed concern with post-operative sexual function and sensation.⁴ Evidence also continues to identify unnecessary early gonadectomies (removal of gonads such as testes and ovaries).⁵ No clinical consensus exists regarding key aspects of treatment, such as necessity, timing or benefit.⁶ When such practices occur without personal informed consent, they violate human rights norms.⁷

¹ Elizabeth Reis, *Bodies in Doubt* (Johns Hopkins University Press 2009); Morgan Carpenter, ‘Intersex Human Rights in a Time of Instrumentalization and Backlash’ in Anthony Tirado Chase and others (eds), *Human Rights at the Intersections: Transformation through Local, Global, and Cosmopolitan Challenges* (Bloomsbury Academic 2022) <www.bloomsburycollections.com/book/human-rights-at-the-intersections-transformation-through-local-global-and-cosmopolitan-challenges> accessed 1 December 2022; Morgan Carpenter, ‘Fixing Bodies and Shaping Narratives: Epistemic Injustice and the Responses of Medicine and Bioethics to Intersex Human Rights Demands’ [2023] *Clinical Ethics* 1.

² Carpenter, ‘Fixing Bodies and Shaping Narratives’ (n 1).

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ Peter Lee and others, ‘Global Disorders of Sex Development Update since 2006’ (2016) 85 *Hormone Research in Paediatrics* 158; Komal Vora and Shubha Srinivasan, ‘A Guide to Differences/Disorders of Sex Development/Intersex in Children and Adolescents’ (2020) 49(7) *Australian Journal of General Practice* 417.

⁷ Australian Human Rights Commission, *Ensuring Health and Bodily Integrity* (2021) <<https://humanrights.gov.au/intersex-report-2021>> accessed 18 October 2021.

Since the 1990s, people with innate variations of sex characteristics have come together to provide each other with support and address systemic issues,⁸ including human rights violations in medical settings. Medicine has failed to self-regulate to address these practices,⁹ so the intersex movement has pursued legislative protections.¹⁰

On 22 March 2023, the Chief Minister of the Australian Capital Territory (ACT) introduced legislation into the Legislative Assembly to regulate medical interventions.¹¹ The Variation in Sex Characteristics (Restricted Medical Treatment) Bill passed on 8 June 2023, with cross-party support. Accompanied by significant new investment in psychosocial and peer support, these reforms promise to offer protection, oversight and support.

The journey

The journey towards legislation has taken more than a decade. In 2013, the Commonwealth parliament's Senate Community Affairs References Committee conducted an inquiry into the involuntary or coerced sterilisation of people with disabilities and intersex people.¹² It called for substantive reform to medical practices, to ensure that interventions occur with oversight, within a human rights framework, and with deferral of non-urgent treatment until individuals can personally consent. The

⁸ Intersex Society of North America 'Hermaphrodites Speak!' (1996)

<www.youtube.com/watch?v=1sf711GKGgw> accessed 18 June 2023; Third International Intersex Forum, 'Malta Declaration' (2013) <<http://intersexday.org/en/third-international-intersex-forum/>> accessed 24 March 2016; AIS Support Group Australia and others, 'Darlington Statement' (2017) <<https://darlington.org.au/statement>> accessed 10 April 2018.

⁹ Elizabeth Reis, 'Did Bioethics Matter? A History of Autonomy, Consent, and Intersex Genital Surgery' (2019) 27(4) *Medical Law Review* 658.

¹⁰ Third International Intersex Forum (n 8); AIS Support Group Australia and others (n 8); Morgan Carpenter, 'The OHCHR Background Note on Human Rights Violations against Intersex People' (2020) 28 *Sexual and Reproductive Health Matters* 1.

¹¹ Legislative Assembly for the ACT, 'Daily Hansard: Transcript 22 March 2023'

<www.hansard.act.gov.au/hansard/10th-assembly/2023/PDF/20230322.pdf> accessed 11 May 2023.

¹² Senate Community Affairs References Committee, *Involuntary or Coerced Sterilisation of Intersex People in Australia* (2013) <www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/~/_media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/second_report/report.ashx>.

Committee also recommended the resourcing of peer and family support and information provision.

Non-implementation of these recommendations prompted community action, including fundraising, community development, research, and advocacy. In March 2017, intersex community organisations brought together advocates and peer support volunteers from around Australia and Aotearoa New Zealand in Darlington, Sydney, leading to publication of a joint platform known as the Darlington Statement.¹³ It calls for criminal prohibition of medically ‘deferrable’ surgical and hormonal interventions ‘that alter the sex characteristics of infants and children without personal consent’. Recognising uncertainty about medical necessity in some instances, the Statement calls for independent and effective human rights-based oversight of clinical decision-making.¹⁴ To address stigma and parental anxiety, it calls for access to ‘funded counselling and peer support’. Responding to a lack of evidence and clinical consensus to underpin clinical guidelines, and a lack of clinical adherence even to guidelines for high-burden childhood conditions, the Statement calls for ‘human rights-based, lifetime’ standards of care, where legislation is seen as a prerequisite.¹⁵ Community actions have also contributed to supportive recommendations by United Nations treaty bodies.¹⁶

The same year, the Australian Human Rights Commission (AHRC) established an inquiry into medical interventions on people born with variations of sex characteristics that reported in 2021.¹⁷ Engaging with clinical, community, human rights

¹³ Available at <<https://darlington.org.au/statement>>. The event was supported by LGBTIQ+ Health Australia. AIS Support Group Australia and others (n 8).

¹⁴ Carpenter, ‘Fixing Bodies and Shaping Narratives’ (n 1).

¹⁵ Intersex Human Rights Australia, ‘Clinical Guidelines’ (14 August 2020) <<https://ihra.org.au/guidelines/>> accessed 24 June 2021.

¹⁶ Committee on the Rights of the Child, ‘Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia’ (2019) CRC/C/AUS/CO/5-6; Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on the Combined Second and Third Reports of Australia’ (2019) CRPD/C/AUS/CO/2-3; Committee on the Elimination of Discrimination against Women, ‘Concluding Observations on the Eighth Periodic Report of Australia’ (2018) CEDAW/C/AUS/CO/8.

¹⁷ Australian Human Rights Commission (n 7).

and legal stakeholders, the AHRC identified five human rights principles for medical decision-making in relation to this population:

- ‘Bodily integrity principle’, reflecting the right of all people to autonomy and bodily integrity.
- ‘Children’s agency principle’, including the right to express views regarding treatment, and support to make decisions.
- ‘Precautionary principle’, including deferral of treatment where safe to do so, until children can make their own decisions.
- ‘Medical necessity principle’, understanding that some treatments may be urgent to avoid serious harm.
- ‘Independent oversight principle’, recognising the serious consequences arising from wrong decisions.¹⁸

The AHRC found that psychosocial health practitioners rejected psychosocial rationales for medical treatment proposed by biomedical health practitioners, and concluded that the reliance on such rationales in international guidance means that cultural change within medicine is unlikely ‘in the absence of binding directions’.¹⁹ It recommended legislative protections with criminal penalties, and resourcing for peer and family support.

Contemporaneously with the AHRC inquiry, community organisations Intersex Human Rights Australia (IHRA), Intersex Peer Support Australia and A Gender Agenda wrote to the ACT Chief Minister Andrew Barr in 2018, requesting a suite of reforms to reflect his government’s intention to be a ‘Capital of Equality’.²⁰ These included

¹⁸ *ibid.*

¹⁹ *ibid* 131.

²⁰ ACT Government, ‘Capital of Equality: An ACT Government Strategy to Deliver Equitable Outcomes for Lesbian, Gay, Bisexual, Trans, Intersex & Queer (LGBTIQ+) People’ (2019) 9

requests for legislation and psychosocial support funding. The Chief Minister made a formal commitment to ‘keeping people safe from harm’ in a Capital of Equality First Action Plan in 2019,²¹ and appointed a staff team to drive the work.

The reforms

The ACT government engaged in an unusually transparent process, with publication of a discussion paper,²² regulatory options paper,²³ draft legislation,²⁴ and listening reports,²⁵ illustrating a careful and thorough engagement with community, clinicians, legal and human rights specialists.²⁶

As passed, the Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023 (ACT) sets out new decision-making processes and oversight for medical interventions on protected persons. Protected individuals are defined as people with a diagnosed or undiagnosed ‘congenital’ variation in sex characteristics, prescribed in an

<www.cmtedd.act.gov.au/__data/assets/pdf_file/0005/1378184/Capital-of-Equality-An-ACT-Government-strategy.pdf>.

²¹ ACT Government, ‘Capital of Equality: First Action Plan 2019 - 2021’ (2019) 3.

<https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0006/1438107/Capital-of-Equality-First-Action-Plan-20192021.pdf>.

²² Chief Minister, Treasury and Economic Development Directorate, ‘Key Issues in the Prohibition of Deferrable Medical Interventions on Intersex Children: Discussion Paper’ (2020)

<https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0015/2004108/Discussion-Paper.pdf>.

²³ Chief Minister, Treasury and Economic Development Directorate, ‘Protecting the Rights of Intersex People in Medical Settings Regulatory Options Paper’ (2021)

<https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0009/2004111/Options-Paper.pdf> accessed 30 June 2021.

²⁴ Chief Minister, Treasury and Economic Development Directorate, ‘Draft Legislation to Protect the Rights of People with Variations in Sex Characteristics in Medical Settings Listening Report on Submissions Received’ (2022)

<https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0009/2065662/Listening-Report_Variations-in-Sex-Characteristics-Bill.pdf> accessed 1 September 2022.

²⁵ Chief Minister, Treasury and Economic Development Directorate, ‘Protecting the Rights of Intersex People in Medical Settings Listening Report on Submissions Received about Regulatory Options’ (2021) <https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0008/2004110/Options-Paper-Listening-Report.pdf> accessed 6 April 2022; Chief Minister, Treasury and Economic Development Directorate, ‘Listening Report on Submissions Received’ (n 24); Chief Minister, Treasury and Economic Development Directorate, ‘Key Issues in the Prohibition of Deferrable Medical Interventions on Intersex Children: Listening Report on Submissions Received’ (2021) <https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0014/2004107/Discussion-Paper-Listening-Report.pdf> accessed 22 April 2021.

²⁶ ACT Government, ‘Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2023 Explanatory Memorandum’.

associated regulation who are unable to personally consent to medical treatment.²⁷ To promote greater certainty, a non-exhaustive list of included traits and a list of excluded traits are defined in the current draft regulation.²⁸ This regulation is expected to exclude all forms of ‘hypospadias’ except when accompanied by undescended testes (‘cryptorchidism’).²⁹ Hypospadias is a trait in individuals understood as male where the urethral opening is on the underside of the penis, or scrotum or perineum, and not at the tip of the penis; children with this trait are routinely subjected to masculinising surgeries and examinations.³⁰ Male circumcision is excluded from the scope of the legislation,³¹ while female genital mutilation (FGM) is already prohibited.

The legislation is expected to primarily impact decision-making in relation to children. Irrespective of age, the reforms seek to promote a shift towards supported decision-making, including through ensuring that protected individuals have been provided with support to understand information, and support to express their wishes.³²

The law permits emergency medical treatment, and treatment with personal informed consent; it also enables access to treatments that are ‘easily reversible’ or that do not impact sex characteristics.³³ Other practices are ‘restricted medical treatments’, including both surgical and hormonal treatments.³⁴

Restricted treatments must be authorised by a committee of an assessment board, through either a ‘general medical treatment plan’ (approved by the board for

²⁷ Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023 (ACT) s 7.

²⁸ Exposure Draft, Variation in Sex Characteristics (Restricted Medical Treatment) Regulation 2023 (ACT).

²⁹ *ibid.*

³⁰ Chief Minister, Treasury and Economic Development Directorate, ‘Freedom of Information Request’ (2023) <www.cmtedd.act.gov.au/__data/assets/pdf_file/0016/2208040/2023-110.pdf> accessed 10 May 2023.

³¹ Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023 (ACT) (n 27) s 8.

³² *ibid.* s 16.

³³ *ibid.* s 8.

³⁴ *ibid.*

treatments of a particular type, or specific traits), or an ‘individual treatment plan’.³⁵ General treatment plans will be developed through public consultation.³⁶ Committees appointed to determine individual cases must consider whether a treatment on an individual can be safely deferred, and whether it has the least restrictive impact on future decisions by that individual.³⁷ The board includes a president and committee members comprised of individuals with expertise in medicine, ethics, human rights, variations in sex characteristics, and provision of psychosocial support.³⁸

The law creates new criminal offences for performing a restricted procedure, or removing someone from the ACT to undertake such a procedure.³⁹ Clinicians must report treatment on people with variations in sex characteristics to the expert panel, including urgent treatment and exempt treatment permitted by regulation.⁴⁰ Parental or carer consent is still needed for treatment to proceed.⁴¹

The assessment board will publish information each year, in a form that protects individuals’ privacy.⁴² The legislation will be reviewed after two years.⁴³ These provisions are intended to ensure the effectiveness of the reforms, and potentially facilitate amendments, for example, to eliminate or expand exemptions.

At time of writing, an Exposure Draft of the necessary accompanying regulation has been released and is expected to be in place before the scheme starts in late 2023. The new protections are being introduced slowly, over an eighteen-month period. They are accompanied by significant investment in psychosocial support, including the establishment of a new Variations in Sex Characteristics Psychosocial Support Unit in

³⁵ *ibid.* pt 3.

³⁶ *ibid.* s 21.

³⁷ *ibid.* s 16.

³⁸ *ibid.* s 31.

³⁹ *ibid.* pt 4.

⁴⁰ *ibid.* s 43.

⁴¹ ACT Government (n 26) 13.

⁴² Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023 (ACT) (n 27) s 44.

⁴³ *ibid.* s 47.

Canberra Health Services, training for health professionals, and community education and awareness campaigns.⁴⁴ Together, the protections and psychosocial support unit promise to transform models of care *from* approaches centred on early surgical and endocrinological ‘management’ of intersex traits, *to* practical approaches that centre psychosocial support in addressing stigma and misconceptions, supporting families and, to the maximum extent possible, helping individuals to determine and express their own values and preferences for medical treatment.

Stakeholder perspectives

The transparency of the reform process has revealed continuing divergent perspectives amongst stakeholders. Community and mental health professional bodies have typically supported legislative reform.⁴⁵ Contrarily, some medical professionals have asserted ‘that psychosocial factors or “social integration” should be valid reasons to undertake medical interventions without personal consent’, while other clinical stakeholders ‘rejected the argument that intersex healthcare is influenced by social expectations about bodies’.⁴⁶

Community organisations articulate two major concerns arising with the reforms. Firstly, the offence of arranging or authorising unapproved restricted treatment requires that the person committing an offence knew the treatment would be an offence.⁴⁷ Ignorance of the law can thus provide an excuse. This has been justified by the provision of services in Canberra to NSW residents and the role of hospitals in other

⁴⁴ Chief Minister, Treasury and Economic Development Directorate, ‘Protecting the Rights of People with Variations in Sex Characteristics in Medical Settings’ (2022) <www.cmtedd.act.gov.au/policystrategic/the-office-of-lgbtqi-affairs/variations-in-sex-characteristics-bill> accessed 30 May 2022.

⁴⁵ Chief Minister, Treasury and Economic Development Directorate, ‘Listening Report on Submissions Received’ (n 24).

⁴⁶ *ibid.*

⁴⁷ Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023 (ACT) (n 27) s 28(b).

states in providing specialised care to people in ACT, but it is nevertheless striking. This provision likely only applies to parents and carers, so the legislation is still likely to have the intended impact on clinical practice.

Secondly, the draft regulation exempts most masculinising interventions from the scope of protections, including all forms of treatment for hypospadias unless accompanied by undescended testes.⁴⁸ Community organisation IHRA sought universal protections. It says that, while community organisations won arguments for legislation and accountability, they ‘lost the argument that protections should be available for everyone. This resulted in the government conducting a diagnosis-by-diagnosis analysis to determine inclusion or exclusion from protections’.⁴⁹ A source of distress in community spaces and the subject of extensive debate by all stakeholders, this provision appears ultimately to be a political decision intended to address conflicting views and promote compliance by local healthcare practitioners.⁵⁰ It creates risks not only that some people who need protections will be unable to avail of them, but also concerns that treatment may take place early for visible traits excluded from protections, while potential underlying traits such as hypogonadism or androgen resistance may elude diagnosis until later in life. The existence of exceptions also means that clinical interpretation may be sought to determine who is protected, and this gives rise to the same concerns about self-regulation that have created the need for legislative certainty. The planned legislative review and transparency provisions may provide evidence to

⁴⁸ Exposure Draft, Variation in Sex Characteristics (Restricted Medical Treatment) Regulation 2023 (ACT) (n 31).

⁴⁹ Morgan Carpenter, ‘Bill to End Harmful Practices in Medical Settings to Be Introduced in the ACT’ (Intersex Human Rights Australia, 21 March 2023) <<https://ihra.org.au/40299/act-bill-introduction/>> accessed 23 March 2023.

⁵⁰ Chief Minister, Treasury and Economic Development Directorate, ‘Freedom of Information Request’ (n 30).

bring more procedures within scope. Despite these concerns, community organisations have warmly welcomed the reform package.⁵¹

Clinical stakeholders have expressed concern about the introduction of criminal offences, and concern about provisions prohibiting fears of stigma and discrimination as rationales for medical intervention.⁵² Criminalisation may be confronting, particularly in relation to procedures that clinicians have hitherto regarded as standard practices.

However, criminalisation expresses the seriousness of harms that can arise, particularly when treatments do not coincide with individuals' values and preferences.

Criminalisation is also evident in other areas of health law, for example in relation to FGM, mental health orders, and administration of electroconvulsive therapies.⁵³ As identified earlier, clinical self-regulation has failed, while discretionary sanctions by professional bodies cannot offer the 'binding directions' sought by the AHRC.⁵⁴

Community organisations, the Senate Committee report,⁵⁵ some clinical groups and the AHRC report,⁵⁶ have consistently expressed concern regarding 'psychosocial' clinical rationales for treatment; as a result, the AHRC and the Public Health Association of Australia have welcomed the legislation.⁵⁷

⁵¹ *ibid*; Cody Smith, 'Legislation to Protect Intersex Human Rights in the ACT Passed!' (Intersex Human Rights Australia, 8 June 2023) <<https://ihra.org.au/40398/legislation-to-protect-intersex-human-rights-in-the-act-passed/>> accessed 17 June 2023; Equality Australia, Intersex Human Rights Australia, and A Gender Agenda, "'Landmark Moment' on Intersex Rights, as Draft Intersex Protection Law Released in the ACT' (27 May 2022) <<https://equalityaustralia.org.au/actintersex/>> accessed 31 May 2022.

⁵² Personal communications with author.

⁵³ Mental Health Act 2015 (ACT); Crimes Act 1990 (ACT).

⁵⁴ Australian Human Rights Commission (n 7) 131.

⁵⁵ See for example, Senate of Australia Community Affairs References Committee (n 12) 74.

⁵⁶ See for example, Australian Human Rights Commission (n 7) 78.

⁵⁷ Australian Human Rights Commission, 'Commission Welcomes Passage of New ACT Intersex Laws' (9 June 2023) <<https://humanrights.gov.au/about/news/media-releases/commission-welcomes-passage-new-act-intersex-laws>> accessed 10 June 2023; Public Health Association of Australia, "'An Important Step Forward": If Passed, a New ACT Bill Will Help Protect the Human Rights of Intersex Children' (28 April 2023) <<https://intouchpublichealth.net.au/an-important-step-forward-if-passed-a-new-act-bill-will-help-protect-the-human-rights-of-intersex-children/>> accessed 17 June 2023.

At the same time, community organisations in Australia report misinformation about the new legislation amongst parents and individuals, including claims that children and adolescents will be unable to access any healthcare relevant to their variations, and claims that legislation in the ACT will impact residents in other jurisdictions who do not receive care in Canberra. These do not accurately reflect the circumstances for residents in any jurisdiction.

Developments elsewhere

The ACT joins a growing handful of jurisdictions with legislative protections, beginning with Malta in 2015. There is so far limited evidence of their impact, with concerns expressed regarding limitations in scope (through exclusion of many masculinising procedures); stacking of oversight bodies by clinical representatives; and non-implementation (for example, through a failure to pass necessary accompanying regulations).⁵⁸ The success of the ACT in addressing these concerns is yet to be determined.

The ACT government has invited other jurisdictions to implement equivalent reforms, and offered expertise.⁵⁹ The Victorian government committed to protections in 2021.⁶⁰ The NSW government made a commitment in 2022 to promote the health and human rights of people with intersex variations.⁶¹ The Western Australian health minister has defended existing practices as in children's 'best interests', suggesting

⁵⁸ University of Huddersfield, 'Centring Intersex: Global and Local Dimensions' (2023) <<https://research.hud.ac.uk/institutes-centres/cacs/research-areas/intersex-studies/intersex-studies-conference/>> accessed 17 June 2023; University of Huddersfield and University of Bologna, 'Intersex Social Sciences' (June 2018) <https://research.hud.ac.uk/institutes-centres/ccid/events/intersex_social_sciences_activism_human_rights_and/> accessed 4 July 2018.

⁵⁹ 'Daily Hansard: Transcript 22 March 2023' (n 11).

⁶⁰ Department of Health, '(I) Am Equal: Future Directions for Victoria's Intersex Community' (2021) <<https://www.health.vic.gov.au/publications/i-am-equal>>.

⁶¹ NSW Health, 'NSW LGBTIQ+ Health Strategy 2022-2027' (2022) <<https://www.health.nsw.gov.au/lgbtiq-health/Pages/lgbtiq-health-strategy.aspx>>.

there is no ‘robust evidence’ of harm from medical interventions,⁶² despite a lack of robust evidence supporting those practices, and no clinical consensus regarding key aspects of treatment.⁶³ The Tasmanian Premier suggested in 2021 that relevant interventions do not occur in Tasmania, and has since modified that position to suggest that only necessary and exceptional interventions occur.⁶⁴ National harmonisation can be facilitated by the Commonwealth government, as with FGM and regulation of medical practitioners; both are areas with human rights concerns, including where medical institutions lack consensus.⁶⁵

Protections are not the only legislative developments regulating medical practices on children with innate variations of sex characteristics. A wave of anti-trans legislation in the United States incorporates new exemptions *facilitating* early surgeries on children with innate variations, as have previous waves of Australian legislation prohibiting FGM and enabling recognition of trans people.⁶⁶ For example, the Western Australian Criminal Code prohibits FGM but exempts ‘reassignment procedures’ including ‘in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child’s gender characteristics’.⁶⁷

⁶² Amber-Jade Sanderson, ‘Re: Petition No. 068 - LGBTQIA+ Rights in Western Australia’ (24 January 2023) <[https://www.parliament.wa.gov.au/Parliament/petitionsdb.nsf/\(\\$all\)/34CAC2A7F3C997BA482589590016BE69/\\$file/ev.068.230122.let.001.ajs.pdf](https://www.parliament.wa.gov.au/Parliament/petitionsdb.nsf/($all)/34CAC2A7F3C997BA482589590016BE69/$file/ev.068.230122.let.001.ajs.pdf)> accessed 25 February 2023.

⁶³ Lee and others (n 6); Vora and Srinivasan (n 6).

⁶⁴ Meg Webb, ‘Question - Surgery on Intersex Children’ (Meg Webb MLC, Independent Member for Nelson, 3 April 2023) <<https://megwebb.com.au/question-surgery-on-intersex-children/>> accessed 10 August 2023.

⁶⁵ Parliament of Queensland, ‘Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023’ (2023) <<https://documents.parliament.qld.gov.au/tp/2023/5723T735-E8FF.pdf>> accessed 18 June 2023.

⁶⁶ Carpenter, ‘Instrumentalization and Backlash’ (n 1).

⁶⁷ Gender Reassignment Act 2000 (WA) s 3.

Conclusions

New legislation in the ACT implements infrastructure for the regulation and oversight of medical practices, providing clarity and unprecedented transparency. Work on an associated regulation proceeds. The establishment of a new psychosocial support unit and provisions for reporting on medical treatments are internationally significant. These developments offer a welcome opportunity to draw a line under historic and current practices, and construct transformative new models of care that meet community expectations and human rights norms. These developments in the ACT provide a new benchmark for regulation elsewhere.

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Notes on contributor

Morgan Carpenter is Executive director, Intersex Human Rights Australia and a Research affiliate at the School of Public Health, University of Sydney.

ORCID

0000-0001-6166-7018

Declaration of conflicting interests

The author is executive director of Intersex Human Rights Australia and a member of the drafting committee for the Yogyakarta Principles plus 10. He has been contracted to the UN Office of the High Commissioner for Human Rights, and the Australian Capital Territory Government. His work was acknowledged by the Chief Minister of the Australian Capital Territory in a speech introducing legislation that is the subject of this article. He does or has participated in reference groups for the Australian Human Rights Commission, Department of Health and Aged Care, and the Australian Bureau of Statistics.