



The Australasian Institute for  
**Genital  
Autonomy**  
An Open Future for every Child

**SUBMISSION TO THE NATIONAL CHILDREN'S COMMISSIONER**

**AUSTRALIA'S OBLIGATIONS UNDER THE UNITED NATIONS**

**CONVENTION ON THE RIGHTS OF THE CHILD**

**AFFIRMING THE RIGHT TO BODILY INTEGRITY OF BOYS**

SUBMISSION BY:

AUSTRALASIAN INSTITUTE

FOR GENITAL AUTONOMY (INC.)

MAY 2018

Dear Ms Mitchell,

The Australasian Institute for Genital Autonomy (AIGA) greatly appreciates the opportunity to make a submission to the Australian Human Rights Commission, via the Office of the National Children's Commissioner. Our submission relates to an important area of child safeguarding, where Australia is not satisfactorily progressing in terms of implementing the Convention on the Rights of the Child (CRC).

The AIGA is an incorporated association formed under the Associations Incorporation Act 1981 (Queensland), founded on 7 May 2013. This date was significant as it was the first anniversary of a court decision in Cologne (Köln), Germany in the matter of "Re: Dr K", where a District Court held that genital surgery on a child without any therapeutic need is a breach of the child's human rights, and an assault at law.

When it comes to a child's right to Physical Integrity and Genital Autonomy, the AIGA is concerned that there seems to be a very different set of rules and rights in Australia for girls as compared to boys, and very vague rules and rights for girls and boys born with intersex conditions (i.e. born with variations of sex characteristics).

This submission will particularly focus on the need for Australian boys to have the same basic right of bodily integrity, specifically genital integrity, that Australian girls have. The submission will:

1. Highlight some of the legal, moral and ethical inconsistencies associated with the genital cutting of male children in Australia.
2. Provide detailed examples of how non-therapeutic genital cutting upon boys violates several core principles of the UN Convention on the Rights of the Child.
3. Provide references to significant international advancements in child safeguarding related to the protection of boys from genital cutting.

It is the AIGA's contention, that even though parents might *want* to alter the appearance of their son's penis, or *believe* they might avoid future problems for him by removing the foreskin from his penis, it is in fact, the *boy's right* to keep his genitalia intact that is the paramount issue. Equally, while certain religious groups might feel it is their *religious right* to use the genitals of a child as part of their rituals, it is once again the *boy's right* to physical integrity that must be considered paramount.

To help illustrate this point, it is instructive to consider how the law in Australia *would* deal with a person (whether or not medically qualified) who cut a few square centimetres of skin and tissue from a thigh of a healthy minor for non-medical reasons; perhaps for their own social, cultural or religious reasons, or as an act of violence:

*(Likely treated as a crime of 'wounding' (meaning more than just the top layer of skin is broken by the act), as dealt with under section 33 or 35 of the NSW Crimes Act 1900: minimum penalty of 10 years imprisonment.)*

And then to consider how the law in Australia *currently* deals with a person (whether or not medically qualified) who cuts a few square centimetres of skin and tissue 'slightly higher up' on the body of a healthy child:

*(In the case of girls, under section 45 of the NSW Crimes Act, the person is liable to imprisonment for 21 years. And in the case of boys, while a 'wounding' has undeniably occurred, the law simply turns a blind eye.)*

The cutting of children's genitals is a highly emotionally charged topic, traversing issues of religious freedoms, cultural sensitivities, parental rights, medical ethics, state laws and of course, the Human Rights of the Child. Parents who submit their son (indeed, any child) for genital cutting are invariably acting in good faith, fully believing they are acting in the best interests of the child. Certain religious and cultural groups have strong historical connections with genital cutting. To them, any condemnation of genital cutting is insulting. It is critical this aspect of child safeguarding be approached respectfully, with the focus remaining on equal treatment under the law and the fundamental human rights of the child.

### ***The Cutting is the Harm***

The foreskin of the adult male penis comprises 30 to 50 square centimetres of specialized, erogenous tissue, with many important protective and sexual functions. A 2007 [study](#) published in the British Journal of Urology found "The [5] most sensitive regions in the uncircumcised penis are those parts ablated by circumcision".

The circumcision of boys is "significant harm" and more damaging than mild forms of female genital mutilation. This was the considered opinion of Sir James Munby, President of the British Family Court, as stated in a [2015 judgment](#).

### ***Australian legislators have sent the strongest possible message against the cutting of girls***

Legislation prohibiting all forms of female circumcision, widely known as female genital mutilation, or female genital cutting, already operates in each state and territory of Australia, with penalties ranging to up to [21 years imprisonment](#) in some states (roughly the equivalent penalty for the crime of murder), regardless of how minor (prick, nick, scrape..) or extensive (excision and infibulation..) the cutting. Simply, the Rights of the Child outweighed *all* other considerations. This zero-tolerance approach is certainly aided by the fact FGM/C was not a traditional cultural practice in Australia.

### ***Today, anyone can cut an Australian boy's penis, with any implement, for any reason***

When it comes Australian boys, the legislative situation could not be more different. Any person, with or without experience or qualifications, can perform genital surgery on a male minor, for any reason, with any cutting implement at location (i.e. from a medical setting, to a place of worship, to a kitchen table, to the Australian bush), as long as one parent (without proof of ID) offers-up the child. It is a complete regulation-free zone. Contrast this situation to the way any other part of a child's body can be treated under the law and under medical ethics. Something is clearly very wrong.

### ***Is it legal in Australia to subincise a baby boy? If not, why not?***

A former Northern Territory Minister told the NT Royal Commission into the Protection and Detention of Children of his concerns regarding the "genital mutilation of boys in cultural practices", going on to say "Indigenous community leaders had to initiate change" (after cabinet colleagues opposed his efforts to broaden the definition of child abuse). He told the commission "There should be a standard for child protection, and human rights should have ascendancy over cultural rights". Given the extent of the injuries and their location, it is entirely possible boys in the [incident](#) he highlighted were subjected to *subincision*; a very secretive, very severe and geographically-widespread traditional indigenous practice across Northern Australia, which is believed to still occur today (see [here](#) and [here](#)), as with all male genital cutting, is completely unregulated, unrestricted and therefore goes unpunished, even when 'things go wrong'.

### ***If smacking a child violates the child's Human Rights, what about cutting a child?***

UN CRC General Comment No. 8 (2006) identified corporal punishment as a violation of the Rights of the Child. In 2013, the Royal Australasian College of Physicians released its Position Statement on the Physical Punishment of Children: "The RACP believes that physical punishment is an outdated practice. It fails to recognise the human rights of the child."

The RACP says: "We consider it important to resolve the inconsistency in Australian law which allows only children to be hit. We acknowledge this may take time to become accepted and instituted but believe the process should be commenced." Allowing 'only male children to be cut' is surely an even greater 'inconsistency'.

### ***Altering a child's name versus irreversibly altering a child's genitals***

Merely changing a child's name is a rigid process, subject to regulatory oversight and approval, with the consent of both parents required and certain names prohibited. Changing a name is 100% reversible and causes no physical harm whatsoever. Conversely, for a boy subjected to genital cutting (without need and without his consent), for the entirety of his life, his penis will be irreversibly altered. It will never look, feel or function as it biologically should.

### ***The Australian Government's funding of genital cutting needs to end immediately***

Not a single national medical or paediatric body anywhere in the world recommends routine circumcision, with most taking a firm position against the practice. Australian health authorities have firmly and consistently recommended against the practice since 1971. In 1985 the Australian Federal Health Minister removed the rebate for newborn circumcision from the Medical Benefits Schedule as a direct result of the 1983 recommendations of the Australian National Health and Medical Research Council which found ritual circumcision was unnecessary and hazardous. Regrettably, the Medicare rebate was almost immediately reinstated as a result of religious lobbying.

Medicare funding (relatively low and unchanged for many years) implies tacit Australian Government endorsement and encourages private health insurers to fund the practice. The removal of Medicare funding would send a positive signal to parents, insurers and the relatively-few doctors that participate (around a quarter of one percent of Australian doctors). A 2012 *Australian Doctor survey* showed 51% of respondents believed that "circumcision of newborns is tantamount to child abuse and should never be performed", with 74% believing circumcision should not be routinely offered in the public system (all states had ended the practice in their public hospitals by 2007).

### ***If Australian dogs are protection from cultural surgery, why not Australian boys?***

The RSPCA reports that in 2004, the cosmetic tail docking of dogs was banned nationwide, under animal cruelty / animal welfare laws. The RSPCA notes 'pro docking' claims of easier hygiene and prevention of problems down the track, which they dismiss entirely. Perhaps unsurprisingly, the very same justifications are used to cut normal, healthy boys.

### *A problematic double standard...*

Proponents of female genital cutting recognise the West's hypocrisy on the issue and (similar to proponents for male cutting) argue there are medical benefits, along with calling for the practice to be medicalised. It is important to remember, every society that participates in female genital cutting also performs male genital cutting, with no moral distinction. In 2010, the American Academy of Pediatrics fell into this trap, briefly recommending that doctors be allowed to perform Type IV cutting on girls, for social reasons, at the request of the parents. Those with child safeguarding responsibilities need to remain vigilant and resist any moves to water-down the hard-won protection of girls, but also work to address the double standard that currently allows boys to be cut, which ultimately undermines the rights of all children.

### *Where to from here...?*

It's fair to say that Australia has historically had a massive blind spot with respect to the right of genital autonomy for male minors and the AIGA is actively working to raise awareness of the issue and keen to work with and support the work of the National Children's Commissioner to this end.

It's often said *society changes first and the law eventually follows*. On behalf of Australian boys, the AIGA urges the National Children's Commissioner to help advance children's rights in this country by taking a strong stance against *any* non-therapeutic genital cutting of *any* child, in line with Australia's obligations under the CRC. The AIGA believes the office of the National Children's Commissioner is ideally placed to initiate this important change.

The following pages list the CRC Articles which are breached when state parties fail to act to protect *all children* from genital cutting.

Also listed are significant, recent international developments, increasingly moving towards the legal protection of boys from genital cutting.

Your sincerely,



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(for) Paul Mason | AIGA Chair | former Tasmanian Children's Commissioner

## *Genital Cutting of boys violates the principles of the Convention on the Rights of the Child (CRC)*

The case against unnecessary genital cutting of children is reinforced by the Convention on the Rights of the Child (CRC). CRC expressly safeguards the child's *right to autonomy* and *bodily integrity* and several Articles support the proposition that the genital cutting of children breaches their fundamental human rights.

- **Article 2** ensures that the rights of girls, boys and intersex children are equal without discrimination irrespective of their sex. This is not currently the case in Australia, where girls have strong legal protection from genital cutting and boys have no legal protection.
- **Article 6(2)** safeguards the survival and development of the child. Removing a boy's foreskin is surgery. The American Academy of Pediatrics 1999 [Circumcision Policy Statement](#) described the removal of the foreskin as an "amputation". Clearly, normal, healthy children should not be subjected to any amputative surgeries.
- **Article 12** assures to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. An infant is obviously unable to express their own views on what should occur to their body, so caution should be taken to not make any irreversible changes to their body until they reach an age where they can decide themselves. Every person deserves the right to enter adulthood with all of their erogenous tissues intact.
- **Article 14** gives each child the right to freedom of conscience, religion and belief, and notes the rights of parents to "provide direction". "Direction" does not entail irreversible surgery. It refers to ideological guidance. This is further expanded upon below.
- **Article 16** bars arbitrary or unlawful interference with a child's privacy. This is an example of where societal change needs to occur, with certain individuals (parents, doctors, elders, holy men) and groups with a misplaced sense of entitlement to interfere with and modify the genitalia of children.
- **Article 19.1** provides that states shall take all appropriate measures "to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Genital cutting involves physical harm to the child and irreversible alteration of their genitals. This could very well come under the umbrella of physical or sexual abuse.
- **Article 34** of the Convention on the Rights of the Child requires states to undertake to protect the child from all forms of sexual exploitation and sexual abuse. These are strong terms. But if a child's genitals become subject to adult rituals, is this not a form of sexual exploitation? And from the perspective of the child / victim, would having your genitals cut not be a form of sexual abuse? Sexual abuse thrives in environments where there is a power imbalance. Could there be a greater power imbalance than a newborn versus an adult with a cutting instrument...?
- **Article 36** obliges states to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. Male children aren't born needing or wanting surgical alteration of their private parts.
- **Article 37(a)** forbids subjecting any child to torture or other cruel, inhuman or degrading treatment or punishment.
- **Article 37(b)** of the Convention on the Rights of the Child provides, "No child shall be deprived of his or her liberty unlawfully or arbitrarily." If you don't own your own body, what do you own...?

## *CRC ARTICLE 14 – Child’s Right to Freedom of Conscience Religion and Belief*

Under Article 14.1 of the CRC, each child has the right to demand that states respect their right to freedom of thought, conscience, and religion.

Religious freedom involves one's personal right to practice one's own religion. It is not the right to practice one's religion on other people. The latter would be the antithesis of freedom of religion because it deprives another person of the choice that they alone are able to make. It was to prevent the abominations of forced conversion seen in so much of human history, from the Crusades to the war in the former Yugoslavia, that the right was enshrined in international law. Freedom of religion is, so to speak, a shield, not a sword. It protects the individual's right to have a belief and to show that belief publicly (a shield) from people who would interfere with it. But it is not a sword permitting one to impose one's own religion upon others. That is not a legitimate use, but an abuse, of freedom of religion. No document or doctrine in international law supports the use of religion in such a way.

Article 14.2 is unique in international human rights instruments in that it refers to a right of people (parents) not the beneficiary (the child) of the Convention. Parents are entitled to “provide direction to the child”, which is specifically restricted to direction in the exercise of the child's right to freedom of religion – not the parent's right, and it is not a right to impose on the child. Furthermore, it can only be done “in a manner consistent with the evolving capacities of the child.” Since babies and young children may be thought incapable of holding religious beliefs, this implies that parents hold their children's Article 14 rights in trust for the child intact.

When the procedure is one based on religion, it is primarily the parents' religion that motivates the procedure and may not be the religion of the person whose genitals are being irreversibly altered. Children bear their own right to freedom of religion, independent of the wishes of their parents or guardians. Moreover, the act of imposing a ritual cutting upon a child, particularly upon the genitals, takes away that individual's right to a whole, functional body and his right to choose whether to be marked with the scars of that particular religion.

Finally, even if religion did justify the procedure, identical language in Article 14.3 of the Convention on the Rights of the Child and Article 18.3 of the ICCPR is very clear in providing that a limitation to the parent's freedom of conscience and religion arises where such freedom, if exercised, would result in violating the public safety, order, health, or morals, or the fundamental rights and freedoms of another human being. An unnecessary and irreversible disfigurement of a non-consenting baby's genitals can reasonably qualify as such a violation under this limitation.

## *High-level recognition of the right of boys to Physical Integrity is happening around the world*

### **Joint statement from the Nordic Ombudsmen for Children and pediatric experts (2013)**

"As Ombudsmen for Children and pediatric experts we are of the opinion that circumcision without medical indications in conflict with Article 12 of the Convention on the Rights of the Child, which addresses the child's right to express his/her own views in all matters affecting him/her, and Article 24, point 3, which states that children must be protected against traditional practices that may be prejudicial to their health."

### **Children's right to physical integrity | Resolution 1952 (2013) Parliamentary Assembly of the Council of Europe**

"The Parliamentary Assembly is particularly worried about a category of violation of the physical integrity of children, which supporters of the procedures tend to present as beneficial to the children themselves despite clear evidence to the contrary. This includes, among others, female genital mutilation, the circumcision of young boys for religious [non-therapeutic] reasons, early childhood medical interventions in the case of intersex children, and the submission to, or coercion of, children into piercings, tattoos or plastic surgery."

### 29,000 Denmark Doctors: Circumcising Healthy Boys is “Ethically Unacceptable” - No Meaningful Benefits (2016)

“Circumcision of boys without a medical indication is ethically unacceptable when the procedure is carried out without informed consent from the person undergoing the surgery. Therefore, circumcision should not be performed before the boy is 18 years old and able to decide whether this is an operation he wants.”

### Belgian Ethics committee rules against infant circumcision (2017)

After 3 years of deliberations, the Belgian federal government’s Committee for Bio-Ethics has ruled against the circumcision of infant boys for reasons other than medical necessity. Its ruling states that bodily integrity is more important than religious faith. “As circumcision is irreversible and therefore a radical operation, we find the physical integrity of the child takes precedence over the belief system of the parents.”

### **The Yogyakarta Principles Plus 10 | Principle 32 | The Right to Bodily and Mental Integrity (2017)**

"Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to be free from torture and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity, gender expression and sex characteristics. No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person."

### **Child Rights International Network (CRIN) | The 2018 Report has a strong focus on Genital Autonomy**

"Of particular concern are the practices that enjoy majority support or indifference within the countries in which they’re practiced. Indeed, these are the hardest to root out and expose as harmful to children because it would entail disturbing the status quo. Some of the most abhorrent violations of bodily integrity of our time, which are still widely performed and accepted, are those carried out on the most sensitive and private part of the human body: the genitals. With the exception of female genital mutilation, which is rightly one of the most widely recognised and challenged harmful traditional practices, there are a number of other procedures that involve irreversibly altering children’s genitals through surgery for no justifiable medical reason. These are: sex assignment of intersex children, forced sterilisation of children with learning disabilities, and routine male circumcision, all three of which remain legal in most countries around the world when performed on children.

### Danish political party wants minimum age for male circumcision

A Citizens Initiative in Denmark has almost reached the required number of signatures (currently at 95% of the necessary 50,000) for a minimum age restriction of 18 years to be debated in the Danish parliament. “We think it’s very simple. We had no problems deciding to forbid female circumcision, we had no problem scrapping the right for parents to smack children, and now it’s time to get to grips with this issue.” Health spokesperson, Kirsten Normann Andersen, Socialist People's Party.

### 'His body, his choice': Icelandic MP responds to circumcision ban backlash

"I found the statement from the Nordic ombudsman of children from 2013 where they encourage all the Nordic states to ban circumcision on boys as it goes against the UN convention on the rights of the child, so I put the bill forward to protect children first and foremost because I think the rights of the child should be taken further than the rights of an adult to believe whatever an adult wants to believe in." -MP Silja Dögg Gunnarsdóttir