



**Australian
Human Rights
Commission**

PROTECTING THE HUMAN RIGHTS OF PEOPLE BORN WITH VARIATIONS IN SEX CHARACTERISTICS

UNDERSTANDING RATIONALES FOR INTERVENTION

The rationales behind surgical and non-surgical interventions are varied.

An understanding of the different reasons relied upon in decision-making is important to help understand whether decision-making is within the parental scope of authority and how the best interests of the child are being considered.

In Australia, court authorisation for interventions is not required in cases where there is a ‘therapeutic’ need, meaning where it is necessary for the health of the child. However, what is deemed medically necessary can be confused and uncertain, particularly where psycho-social rationales for interventions are considered.

Psycho-social rationales are rationales based on social and cultural factors. These include justifying interventions on the basis of stigma, embarrassment and presumed psychological distress about having a body that is different, or relying upon assumptions about what male and female bodies *should* look like or the functions that men and women *should* be able to have.

Relying upon psycho-social rationales can overlook the fact that societal values change, and what is considered unacceptable or stigmatising may change over time and in different places. It is also important to note that interventions themselves can create or contribute to the very issues they are trying to prevent.

Medical rationales are rationales based on physical need. These include emergency life-saving treatment, ensuring adequate urine flow and removal of high cancer risks. These interventions may be required to be undertaken for the physical health of the child, however depending on the circumstances the intervention may be able to be delayed.

Other rationales also come into play when considering medical interventions. Justifications for particular interventions may also be based upon the necessity of **timing of intervention**, on the basis that outcomes may be more successful if they are performed earlier; on **technical considerations** regarding what is surgically possible to perform and the expected results of intervention; and **financial considerations** for different interventions and access to psychological support.



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Discussion questions:

- Would a legal definition of medical necessity or therapeutic treatment be helpful and, if so, what should the definition be?
- What are the permissible rationales/considerations that should be taken into account when determining whether or not to undertake a medical intervention on behalf of those who lack the capacity to consent?

This sheet forms part of the Australian Human Rights Commission's inquiry into how best to protect the rights of people born with variations in sex characteristics in the context of medical interventions. These sheets are designed to prompt thoughts and considerations for written submissions. Submissions do not need to be limited to the issues raised in this sheet.

Writing a submission? Please complete a Participant Consent Form and attach it to your submission. Submissions should be sent by email to sogii@humanrights.gov.au or by post to GPO Box 5218, Sydney NSW 2001.

Your information will be stored securely and your identity/information will be kept strictly confidential, except as required by law. Inquiry findings may be published, but you will not be individually identifiable in these publications. Submissions on behalf of organisations may be identifiable only where the organisation has given permission for the Commission to publish information attributable to that organisation.

For further information about the project, please email sogii@humanrights.gov.au or phone 02 9284 9650 or 1300 369 711.

Consultation for this project has been approved by an external, independent Human Research Ethics Committee (HREC). Any queries or concerns about ethics may be directed to the University of Sydney Human Research Ethics Committee by email to human.ethics@sydney.edu.au, citing reference 2018/338.