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Submission to the Australian Human Rights Commission consultation on protecting the human rights of people born with variations of sex characteristics in the context of medical interventions

About SARAA

The South Australian Rainbow Advocacy Alliance (SARAA) is pleased to be able to contribute a submission to the Australian Human Rights Commission consultation on protecting the human rights of people born with variations of sex characteristics in the context of medical interventions. SARAA is a not-for-profit incorporated association; we advocate for the health and human rights of LGBTIQ+ people in South Australia. We seek to create positive change to policy, legislation and systems affecting the ability of LGBTIQ+ people to live safe, happy and fulfilled lives in the wider community.

Background and context

Intersex people in Australia are routinely subject to medical interventions without personal informed consent, typically in infancy, childhood or adolescence. In 2017 the UN Human Rights Committee expressed concern with “irreversible and invasive medical interventions” on intersex children “often based on stereotyped gender roles and are performed before the children concerned are able to provide fully informed and free consent”. SARAA is aware there is incontrovertible evidence of current practices that subject people born with intersex variations to unnecessary and inhumane medical interventions that irreparably harm and impact their health and wellbeing throughout their lives.

We make this submission with the recognition that Australia is a signatory to and has obligations to the Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. In accordance with these international treaties and conventions, it is therefore our national obligation to put in place protections that will ensure the rights of intersex people are upheld.

The position of SARAA

Intersex individuals and intersex-led organisations have laid out a range of demands and strategies that are required to redress these injustices. The Darlington Statement, published in 2017, calls for:

- prohibition (as a criminal act) of deferrable medical interventions, including surgical and hormonal interventions, that alter the sex characteristics of infants and children without personal consent
- mandatory independent access to funded counselling and peer support
- appropriate human rights-based, lifetime standards of care with full and meaningful participation by intersex community representatives and human rights institutions
- independent, effective human rights-based oversight mechanism(s) to determine individual cases involving persons born with intersex variations who are unable to consent to treatment, bringing together human rights experts, clinicians and intersex-led community organisations.

In addition, the Yogyakarta Principles (32B) call for legislation that protects everyone, including all children, from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics.

SARAA fully endorses the Darlington Statement and the Yogyakarta Principles (plus 10) and urges the Australian Human Rights Commission to support adoption of these recommendations by the Australian Government in full.

In addition, SARAA supports the recommendations of the 2013 Senate Committee Inquiry into involuntary or coerced sterilisation of intersex people in Australia, including:

Recommendation 3

3.130 The committee recommends that all medical treatment of intersex people take place under guidelines that ensure treatment is managed by multidisciplinary teams within a human rights framework. The guidelines should favour deferral of normalising treatment until the person can give fully informed consent, and seek to minimise surgical intervention on infants undertaken for primarily psychosocial reasons.

Recommendation 5

4.43 In light of the complex and contentious nature of the medical treatment of intersex people who are unable to make decisions for their own treatment, the committee recommends that oversight of these decisions is required.

Recommendation 6

5.30 The committee recommends that all proposed intersex medical interventions for children and adults without the capacity to consent should require authorisation from a civil and administrative tribunal or the Family Court.

Recommendation 9

5.38 The committee recommends that the special medical procedures advisory committee draft guidelines for the treatment of common intersex conditions based on medical management, ethical, human rights and legal principles. These guidelines should be reviewed on an annual basis.

Recommendation 10

5.41 The committee recommends that complex intersex medical interventions be referred to the special medical procedures advisory committee for consideration and report to whichever body is considering the case.

Recommendation 11

5.70 The committee recommends that the provision of information about intersex support

groups to both parents/families and the patient be a mandatory part of the health care management of intersex cases.

Recommendation 12

5.72 The committee recommends that intersex support groups be core funded to provide support and information to patients, parents, families and health professionals in all intersex cases.

SARAA understands that the lack of resources and dedicated funding for intersex-led organisations, research and initiatives prevents advancement of agency, wellbeing and legislative reform required to implement these recommendations. Therefore, SARAA also strongly supports and calls for funding to be provided for intersex-led peer support and systemic advocacy.

Summary

In summary, SARAA supports the recommendations of the UN Committee on the Elimination of Discrimination Against Women, which states that Australia should:

Adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children before they reach the legal age of consent, implement the recommendations of the 2013 Senate inquiry on involuntary or coerced sterilisation of intersex persons, provide families with intersex children with adequate counselling and support, and provide redress to intersex persons having undergone medical treatment.