
It's time for Medicare Australia to stop providing rebates for infant male circumcision

NB

Infant male circumcision is a controversial procedure that has been debated for years. The overwhelming body of Australian medical opinion is firmly against the procedure and clearly classes it as non-therapeutic, yet the procedure is still covered by Medicare, despite their own guidelines stating they do not cover non-therapeutic procedures. This means the Australian government is indirectly authorising a non-recommended procedure. With the medical opinion firm, and in light of recent debates about the ethics and legality of male circumcision, now is the time for Medicare to stop covering this procedure.

For years the potential benefits, disadvantages and ethical issues surrounding male infant circumcision have been debated in Australia and overseas. While male infant circumcision used to be common, even routine, in Western nations including Australia, it has dropped significantly in popularity as doctors and parents have become aware that it is not medically necessary or even recommended.¹ Currently, it is estimated that around 10% of newborn baby boys are circumcised in Australia each year,² at parental choice. As Medicare provides a rebate for circumcision of a boy under 6 months old,³ this unnecessary procedure costs Medicare, and therefore the Australian taxpayers, roughly \$2 million each year.⁴ This is despite Medicare's own statements that they do not provide rebates for clinically unnecessary procedures. Recent policies, reviews and cases relating to the medical, ethical and legal aspects of infant circumcision – such as the Tasmanian Law Reform Institute review,⁵ the Royal Australian College of Physicians new policy statement,⁶ and a case from the Oregon Supreme Court⁷ – highlight the importance of there being a swift policy change in Australia so that Medicare and the Australian Government come in line with current medical opinion and no longer indirectly endorse a non-therapeutic, non-recommended procedure fraught with legal and ethical uncertainties.

¹ Royal Australian College of Physicians, *RACP Current College Position on Circumcision* (2009), Royal Australian College of Physicians
<<http://www.racp.edu.au/download.cfm?DownloadFile=59AE2C7C-9F08-B344-21061157DF3636B9>> at 27 August 2009.

² Ibid.

³ Medicare, *Medicare Benefits Schedule Item 30653* (2009)
<<http://www9.health.gov.au/mbs/fullDisplay.cfm?type=item&q=30653&qt=item&criteria=30653>> at 1 September 2009.

⁴ Medicare, *Medicare Item Reports* (2009) Medicare Australia
<https://www.medicareaustralia.gov.au/statistics/mbs_item.shtml> at 20 August 2009.

⁵ Tasmania Law Reform Institute, *Non-Therapeutic Male Circumcision*, Issues Paper No. 14 (2009).

⁶ Royal Australian College of Physicians, *RACP Current College Position on Circumcision* (2009), Royal Australian College of Physicians
<<http://www.racp.edu.au/download.cfm?DownloadFile=59AE2C7C-9F08-B344-21061157DF3636B9>> at 27 August 2009.

⁷ *Boldt v Boldt* (SC S054714, Ore. 2008). Available at
<<http://www.publications.ojd.state.or.us/S054714.htm>>.

MEDICAL ASPECTS

Circumcision is an ancient procedure by which part of the penis, the foreskin (prepuce), is removed by clamping, crushing or burning. The procedure is recommended in two major religions (Judaism and Islam), where it is usually carried out on the eighth day after birth or in early childhood. Circumcision is also part of some tribal cultures, usually associated with an initiation rite into adulthood. The procedure gained favour amongst doctors in the Western world in the early 1900s for the purpose of curbing masturbation,⁸ became routine in Australia⁹ and common in the United States around the 1950s¹⁰ but is now dropping in popularity in the Western world. Infant circumcision is rare in Canada, Europe and Australia.¹¹

The Australian Paediatric Association first spoke out against the procedure in 1971.¹² The Royal Australian College of Physicians ('RACP') prepared an updated policy on circumcision in August 2009.¹³ Although the full policy has yet to be released, the current College Position on Circumcision states that 'the RACP does not recommend that routine circumcision in infancy be performed'¹⁴ and suggests 'one reasonable option is that it be delayed until males are old enough to make an informed choice'.¹⁵ Routine infant circumcision is also not recommended by the American Academy of Paediatrics¹⁶ or the British Medical Association.¹⁷ Representatives of the Australian Medical Association have officially spoken out against the procedure in the media, supporting suggestions of a ban.¹⁸

These medical statements reason that infant circumcision is not recommended because of the essentially social nature of the procedure. Arguments for health benefits of circumcision are sometimes not substantiated by clear empirical evidence, nor are they sufficiently significant to justify the tissue loss and potential risks of the procedure.¹⁹

⁸ Robert Darby, *A Surgical Temptation: The Demonisation of the Foreskin and the Rise of Circumcision in Britain* (2005) 6-8.

⁹ Ibid 314.

¹⁰ Edward Wallerstein, *Circumcision: An American Health Fallacy* (1980) 1.

¹¹ Robert Darby, *A Surgical Temptation: The Demonisation of the Foreskin and the Rise of Circumcision in Britain* (2005) 315.

¹² Ibid.

¹³ Steven Cauchi, 'Doctors to Leave our Baby Boys Intact', *The Age* (Melbourne), June 7 2009. Available at <<http://www.theage.com.au/national/doctors-to-leave-our-baby-boys-intact-20090606-bz8c.html>>.

¹⁴ Royal Australian College of Physicians, *RACP Current College Position on Circumcision* (2009), Royal Australian College of Physicians <<http://www.racp.edu.au/download.cfm?DownloadFile=59AE2C7C-9F08-B344-21061157DF3636B9>> at 27 August 2009.

¹⁵ Ibid.

¹⁶ Academy of Pediatrics Task Force on Circumcision, 'Circumcision Policy Statement' (1999) 103(3) *Pediatrics* 686.

¹⁷ British Medical Association, 'The Law and Ethics of Male Circumcision: Guidance for Doctors' (2004) 30 *Journal of Medical Ethics* 259-263.

¹⁸ ABC, 'Doctors Back Call for Circumcision Ban', *ABC News*, Dec 9 2007. Available at <<http://www.abc.net.au/news/stories/2007/12/09/2113665.htm>>.

¹⁹ Royal Australian College of Physicians, *Policy Statement on Circumcision* (2004), Royal Australian College of Physicians <<http://www.racp.edu.au/download.cfm?DownloadFile=A453CFA1-2A57-5487-DF36DF59A1BAF527>> at 27 August 2009.

While it is beyond the scope of this paper to analyse all the conflicting medical data in this area,²⁰ a brief summary will be given. While there has been some suggestion that circumcised infants have fewer urinary tract infections (UTIs),²¹ UTIs are rare in both groups (under 1%) and usually easily treated with antibiotics.²² The circumcision complication rate is higher than the risk of UTIs.²³ Another alleged benefit is that circumcision reduces STD acquisition rate. One study,²⁴ heavily promoted in the media,²⁵ was later retracted by the researchers when they admitted it was inconsistent with other research.²⁶ Further, larger studies have shown no differences in STD acquisition between circumcised and intact men.²⁷ There are also suggestions circumcision might reduce penile cancer,²⁸ though it is not considered a valid preventative method.²⁹ While circumcision has been argued to reduce HPV acquisition and consequently cervical cancer in female partners,³⁰ these studies have also been heavily criticised for failing to take account of variables found in other studies.³¹ Circumcision for HPV prevention is now effectively a moot point as an HPV vaccination is now available in Australia.³²

One study showed a reduced HIV acquisition rate amongst heterosexual circumcised men in Africa³³ though this study's methodology has been heavily criticised,³⁴ with one meta-analysis even showing circumcised men were at greater risk of HIV

²⁰ See the RACP statement for a detailed medical analysis.

²¹ CM Ginsburg and GH McCracken Jr., 'Urinary tract infections in young infants' (1982) 69(4) *Pediatrics* 409-412.

²² Ibid.

²³ Royal Australian College of Physicians, *Policy Statement on Circumcision* (2004), Royal Australian College of Physicians <<http://www.racp.edu.au/download.cfm?DownloadFile=A453CFA1-2A57-5487-DF36DF59A1BAF527>> at 27 August 2009.

²⁴ David M. Fergusson, Joseph M. Boden and L. John Horwood, 'Circumcision Status and Risk of Sexually Transmitted Infection in Young Adult Males: An Analysis of a Longitudinal Birth Cohort' (2006) 118(5) *Pediatrics* 1971-1977.

²⁵ For example see Reuters, 'Circumcision Cuts STD Risk, Major Study Shows', *MSNBC News* (November 6 2006) <<http://www.msnbc.msn.com/id/15593753/>>.

²⁶ Letter from David M. Fergusson, Joseph M. Boden and L. John Horwood, 21 November 2006, in *Pediatrics eLetters* <<http://pediatrics.aappublications.org/cgi/eletters/118/5/1971#4725>> at 20 September 2009.

²⁷ NP Dickson, T Van Root, P Herbison, C Paul, 'Circumcision and Risk of Sexually Transmitted Infections in a Birth Cohort' (2008) 152 *Journal of Pediatrics* 383-7.

²⁸ GAO Magoha, RF Kaale, 'Epidemiological and Clinical Aspects of Carcinoma of Penis at Kenyatta National Hospital' (1995) *East Africa Medical Journal* 359-61.

²⁹ S Moses, RC Bailey, AR Ronald, 'Male Circumcision: Assessment of Health Benefits and Risks' (1998) 74 *Sexually Transmitted Infections* 368-373.

³⁰ X Castellsagué, FX Bosch, N Muñoz et al 'Male Circumcision, Penile Human Papilloma Virus Infection, and Cervical Cancer in Female Partners' (2002) 246 *New England Journal of Medicine* 1105-1112.

³¹ Letter to the Editor from John W. Travis, *New England Journal of Medicine*, Volume 347, Number 18: Page 1448, October 31, 2002.

³² Australian Government Department of Health and Ageing, *Fact Sheet: Australian Government Funding of Gardasil* (2006) Australian Government Department of Health and Ageing, <[http://www.health.gov.au/internet/main/publishing.nsf/Content/4754B33584405E06CA2572220008CFA8/\\$File/Gardasilfunding-factsheet.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/4754B33584405E06CA2572220008CFA8/$File/Gardasilfunding-factsheet.pdf)> at 20th September 2009.

³³ M Muller, J Volmink, J Deeks, et al, 'Male Circumcision for Prevention of Heterosexual Acquisition of HIV in Men' (2005) *Cochrane Database System Review* 3.

³⁴ See, for example, Lawrence Green, Ryan McAllister, Kent Peterson et al, 'Male circumcision is not the HIV 'vaccine' we have been waiting for!' (2008) 2(3) *Future HIV Therapy* 193-198.

infection.³⁵ Despite these criticisms, the procedure is currently being promoted in Africa for HIV-prevention purposes. One preliminary study in Africa is showing that circumcision may not be as effective as originally thought, nor as successful as other intervention methods.³⁶ A meta-analysis of HIV infection rates in thirteen African nations found no statistically significant difference in HIV infection rates between circumcised and intact males³⁷ and other studies have reported similar results.³⁸ Additionally, the possible impact of circumcision seems to be only applicable in Africa, with the Australian Federation of AIDS Organisation (AFAO) stating that due to several differences between countries (mainly the fact that the majority of new HIV infections each year in Australia are in homosexual males, to whom circumcision provides no protection),³⁹ male circumcision is not a relevant prevention strategy in Australia.⁴⁰ Additionally, being circumcised is considered a risk factor for condoms breaking or slipping off during use,⁴¹ which could result in increasing infection rates.

Regardless, many of the potential benefits from circumcision, particularly those related to STDs, do not directly apply to infants. By the time a man is at risk of acquiring sexually transmitted infections, he is likely to be competent enough to make his own decision about which preventative measures, surgical or otherwise, he would like to take. There is also the potential for more effective preventative measures, such as vaccinations, to be developed in the next 15-20 years, before today's babies ever have sex.

Circumcision can have many complications, particularly when performed neonatally.⁴² All circumcisions result in the loss of specialised skin, thereby reducing penile sensitivity⁴³ and sexual function.⁴⁴ During infancy, circumcised boys are

³⁵ Robert Van Howe, 'Circumcision and HIV Infection: Review of the Literature and Meta-Analysis' (1999) 10 *International Journal of STD and AIDS* 8-16.

³⁶ V Lima, 'The combined impact of male circumcision, condom use and HAART coverage on the HIV-1 epidemic in South Africa: a mathematical model' (paper presented at the 5th IAS Conference on HIV Treatment, Pathogenesis and Prevention, Cape Town, abstract WECA105, 2009). Available at <<http://www.ias2009.org/pag/Abstracts.aspx?AID=2033>>.

³⁷ Michel Garenne, 'Long-term population effect of male circumcision in generalised HIV epidemics in sub-Saharan Africa' (2008) 7(1) *African Journal of AIDS Research* 2008 1-8.

³⁸ C Connolly, LC Simbayi, R Shanmugam et al, 'Male circumcision and its relationship to HIV infection in South Africa: Results of a national survey in 2002' (2008) 98(10) *South African Medical Journal* 789-94.

³⁹ AE Grulich, O Hendry, E Clark et al, 'Circumcision and male-to-male sexual transmission of HIV' (2001) 15(9) *AIDS* 1188-9; GA Millet, H Ding, J Lauby et al, 'Circumcision status and HIV infection among Black and Latino men who have sex with men in 3 US cities' (2007) 46(5) *Journal of Acquired Immune Deficiency Syndromes* 643-50.

⁴⁰ Australian Federation of AIDS Organisations, *Briefing Paper: Male Circumcision and HIV*, (2009) Australian Federation of AIDS Organisations, <http://www.afao.org.au/library_docs/policy/BP09_Circumcision.pdf> at 16th September 2009.

⁴¹ J Richters, J Gefori and B Donovan. 'Why do condoms break or slip off in use? An exploratory study' (1995) 6(1) *International Journal of STD and AIDS* 11-8.

⁴² M Machmouchi, A Alkhotani, 'Is neonatal circumcision judicious?' (2007) 17 *European Journal of Paediatric Surgery* 266-9.

⁴³ Morris Sorrels, James Snyder, Mark Reiss et al, 'Fine-touch pressure thresholds in the adult penis.' (2007) 99(4) *British Journal of Urology International* 864-9.

⁴⁴ D Kim, M Pang, 'The Effect of Male Circumcision on Sexuality' (2007) 99(3) *British Journal of Urology International* 619-22.

thought to have higher rates of penile problems than intact boys.⁴⁵ A circumcised penis is said to be harder to take care of on an infant, increasing the likelihood of hygiene problems.⁴⁶ Other complications include adhesions,⁴⁷ haemorrhage,⁴⁸ genital injuries⁴⁹ and keloid scars.⁵⁰ Meatitis (inflammation of the urinary meatus) and meatal stenosis⁵¹ are almost exclusively experienced by circumcised boys⁵² and men.⁵³ Additionally, a percentage of boys thought to be as high as 10% need further corrective surgery after circumcision.⁵⁴ There are many cases of penile or glans amputation⁵⁵ and even death.⁵⁶ There is suggestion that circumcised men may be suffering from post-traumatic stress disorder⁵⁷ and other psychological side effects.⁵⁸ Risks and complications are more likely in ritual circumcisions done in non-medical settings.⁵⁹ Circumcision, particularly in a hospital, is a risk factor for methicillin-resistant *Staphylococcus aureus* (MRSA).⁶⁰

LEGAL ASPECTS

Several researchers have examined the legal aspects of infant circumcision in Australia, including whether it could constitute a criminal assault,⁶¹ as well as the possibility for civil action in battery by a circumcised child.⁶² Both the Queensland

⁴⁵ DM Fergusson, JM Lawton, FT Shannon, 'Neonatal circumcision and penile problems: an 8-year longitudinal study' (1988) 81(4) *Pediatrics* 537-41; Robert Van Howe, 'Variability in penile appearance and penile findings: a prospective study' (1997) 80 *British Journal of Urology* 776-782.

⁴⁶ *Ibid.*

⁴⁷ LE Ponsky, JH Ross, N Knipper et al, 'Penile Adhesions after Neonatal Circumcision' (2000) 164(2) *Journal of Urology* 495-6.

⁴⁸ N Williams, L Kapila, 'Complications of Circumcision' (1993) 80 *British Journal of Surgery* 1231-6.

⁴⁹ HI Patel, KP Moriarty, PA Brisson, NR Feins, 'Genitourinary Injuries in the Newborn' (2001) 36(1) *Journal of Pediatric Surgery* 235-9.

⁵⁰ T Köksal, A Kadioglu and A Tefekli, 'Keloid as a Complication after Circumcision' (2000) 85(6) *British Journal of Urology* 1-2.

⁵¹ V Upadhyay, HM Hammodat, PW Pease, 'Post circumcision meatal stenosis: 12 years' experience' (1998) 111(1060) *New Zealand Medical Journal* 57-8.

⁵² GW Kaplan, 'Complications of Circumcision' (1983) 10 *Urologic Clinics of North America* 543-9.

⁵³ HJ Bennett, H. J, M Weissman, 'Circumcisions: Knowledge isn't enough' (1981) 68 *Pediatrics* 750.

⁵⁴ *Ibid.*

⁵⁵ J Sherman, JG Borer, M Horowitz et al, 'Circumcision: successful glanular reconstruction and survival following traumatic amputation' (1996) 156(2) *Journal of Urology* 842-4; J Siegel-Itzkovich, 'Baby's penis re-attached after botched circumcision' (2000) 321 *British Medical Journal* 529.

⁵⁶ N Williams, L Kapila L, 'Complications of Circumcision' (1993) 80 *British Journal of Surgery* 1231-6; Paediatric Death Review Committee: Office of the Chief Coroner of Ontario, 'Circumcision: a minor procedure?' (2007) 12(4) *Paediatric Child Health* 311-2.

⁵⁷ J Rhinehart, 'Neonatal Circumcision Reconsidered' (1999) 29(3) *Transactional Analysis Journal* 215-21.

⁵⁸ R Goldman, 'The Psychological Impact of Circumcision' (1999) 83 Supp. 1 *British Journal of Urology International* 93-103.

⁵⁹ E Özdemir, 'Significantly increased complication risks with mass circumcisions' (1997) 80 *British Journal of Urology* 136-9.

⁶⁰ DM Nguyen, E Bancroft, L Mascola et al, 'Risk factors for neonatal methicillin-resistant *Staphylococcus aureus* infection in a well-infant nursery' (2007) 28(4) *Infection Control and Hospital Epidemiology* 406-11; Robert Van Howe, WLM Robson, 'The possible role of circumcision in newborn outbreaks of community-associated methicillin-resistant *Staphylococcal aureus*' (2007) 46(4) *Clinical Pediatrics* 356-8.

⁶¹ Gregory J Boyle, J Steven Svoboda, Christopher P Price, J Neville Turner, 'Circumcision of Healthy Boys: Criminal Assault?' (2000) 7 *Journal of Law and Medicine* 301.

⁶² Tasmania Law Reform Institute, *Non-Therapeutic Male Circumcision*, Issues Paper No. 14 (2009).

Law Reform Commission and the Tasmanian Law Reform Institute, in 1993 and 2009 respectively, conducted reviews of the legality of male circumcision.⁶³ The Queensland Law Reform Commission states ‘on a strict interpretation of the assault provisions of the Queensland *Criminal Code*, routine circumcision of a male infant could be regarded as a criminal act’.⁶⁴ The Tasmanian Law Reform Institute found that ‘there is uncertainty as to whether the consent of a parent for the circumcision of their child is sufficient to allow a circumciser to legally perform the procedure’⁶⁵ and ‘a Tasmanian Court could hold that circumcision is both an assault and wounding’.⁶⁶ Similar interpretations could be gained in other states and territories.

It is unclear whether parental consent is sufficient to authorise a non-therapeutic circumcision. Parental power to authorise certain procedures is limited and in some circumstances Court authorisation is required.⁶⁷ It is unclear however whether circumcision would meet the requirements for Court authorisation: ‘invasive, irreversible and major surgery...significant risk of making the wrong decision...consequences of a wrong decision are particularly grave’.⁶⁸ Currently, there appears to be a situation of circular reasoning. The Tasmanian Law Reform Institute notes: ‘it seems that circumcisions on boys too young to consent to the procedure themselves may be performed when the performance of the procedure is considered acceptable by society’.⁶⁹ Society’s acceptance seems like a poor way of determining whether the procedure should be legal or not as societies can turn a blind eye towards atrocities simply because of their culture’s history. Additionally, this situation runs the risk of making people think circumcision must be acceptable because it is still legal.

One argument made is that the potential for future legal action by a circumcised child could put strain on Australia’s health system. There has been successful legal action taken due to botched circumcisions.⁷⁰ With parents now circumcising their boys despite strong medical recommendations to the contrary, the potential for future legal action is heightened. It has been theorised that such legal action could potentially place further costs on Australia’s health care system.⁷¹

While it has no binding force on Australian law, a recent decision by the Supreme Court in the State of Oregon⁷² provides an interesting basis for further thought. Divorced parents went to Court when the father, after his conversion to Judaism, wished to get his son circumcised. The father’s primary argument was based on

⁶³ Ibid.; Queensland Law Reform Commission, *Circumcision of Male Infants*, Miscellaneous Paper No. 6 (1993).

⁶⁴ Queensland Law Reform Commission, *Circumcision of Male Infants*, Miscellaneous Paper No. 6 (1993) 39.

⁶⁵ Tasmania Law Reform Institute, *Non-Therapeutic Male Circumcision*, Issues Paper No. 14 (2009) 20.

⁶⁶ Ibid 21.

⁶⁷ *Secretary of the Department of Health and Community Services v JWB and SMB* (1992) 175 CLR 218.

⁶⁸ Ibid at [40].

⁶⁹ Tasmania Law Reform Institute, *Non-Therapeutic Male Circumcision*, Issues Paper No. 14 (2009) 25.

⁷⁰ See “Assaulted and Mutilated: A Personal Account of Circumcision Trauma”, Shane E. Peterson in Denniston et al, *Understanding Circumcision* (2001).

⁷¹ David Richards, ‘Male Circumcision: Medical or Ritual?’ (1996) 3 *Journal of Law and Medicine* 371.

⁷² *Boldt v Boldt* (SC S054714, Ore. 2008). Available at <<http://www.publications.ojd.state.or.us/S054714.htm>>.

freedom of religion and *his* right to circumcise *his* son according to *his* religion; he also claimed preventative health benefits. The mother was opposed, saying the boy did not want the procedure and it was unnecessary regardless. The Supreme Court found that the boy, 12 at the time of the decision, should be able to make up his own mind about whether he wished to be circumcised or not. The case was sent back to the Trial Court and in June 2009 the boy's mother was given sole custody after her son testified *in camera* that he did not want to be circumcised and was scared of his father.

The fact that a Court has decided a 12 year old child should have the right to decide about his own circumcision raises significant issues to do with consent for infant circumcision. This decision has paved the way for Courts in the future to decide that circumcision should be delayed until a boy is able to make his own decision, which would essentially end the practice of infant circumcision. In this case a 12 year old, despite being a minor, was recognised as having bodily autonomy and the freedom to make his own choice. Had the decision been made earlier, it would have been an undisputed parental choice. Indeed, if the parents in this case had agreed, the case would never have come to trial and the child would have been circumcised against his wishes. The Court did not treat the 12 year old as parental property to be physically modified according to the whim of his custodial parent and that parent's religion. Why should babies not be treated the same? They will not be babies forever.

ETHICAL ASPECTS

The RACP notes that there are ethical concerns on performing infant circumcision, and even 'the possibility that routine circumcision contravenes human rights'.⁷³ The procedure is extremely controversial because it has no medical indication and removes a normal body part from a healthy child, without their consent, either for parental religious reasons, parental cosmetic reasons, or unclear prophylactic medical reasons. It has been argued that the procedure violates numerous international conventions including multiple Articles of the United Nations *Convention on the Rights of the Child*.⁷⁴ Several organisations have been formed by males unhappy they were circumcised as infants.⁷⁵

EQUAL PROTECTION FOR MALES AND FEMALES

Throughout Australia, there is legislation criminalising female circumcision, also known as female genital mutilation (FGM).⁷⁶ For example, section 45 of the *Crimes Act* (NSW) prohibits 'excis[ing], infibulate[ing] or otherwise mutilate[ing] the whole

⁷³ Royal Australian College of Physicians, *RACP Current College Position on Circumcision* (2009), Royal Australian College of Physicians <<http://www.racp.edu.au/download.cfm?DownloadFile=59AE2C7C-9F08-B344-21061157DF3636B9>> at 27 August 2009.

⁷⁴ Doctors Opposing Circumcision, *International Human Rights Law and the Circumcision of Children*, (2008), Doctors Opposing Circumcision <<http://www.doctorsopposingcircumcision.org/info/info-humanrights2006.html>> at 20th September 2009.

⁷⁵ See for example National Organisation of Restoring Men (NORM): <<http://www.norm.org/>> and NORM-UK <<http://www.norm-uk.org/>>.

⁷⁶ *Crimes Act 1990* (NSW) s 45; *Criminal Law Consolidated Act 1935* (SA) s 33; *Crimes (Amendment) Act Number 3 1995* (ACT); *Criminal Code Act 1983* (NT), ss 186A-186D; *Crimes Act 1958* (Victoria), ss 32-38A; *Criminal Code Act 1899* (Qld), ss 323A-323B.

or any part of the labia majora or labia minora or clitoris'. This wording effectively prohibits any type of FGM, no matter how minor.

However, there is no equivalent protection afforded to males, even though infant male circumcision is arguably equally or more invasive than certain types of FGM, despite popular opinion that FGM is always far worse and not even comparable to male circumcision.⁷⁷ The World Health Organisation classes FGM into four types.⁷⁸ Type I, the least severe, is defined as 'partial or total removal of the clitoris and/or the prepuce'.⁷⁹ The clitoral prepuce is anatomically analogous to the male penile prepuce. The only reason the procedure is not viewed the same in Australian society is because of the Western world's historical entanglement with male circumcision, and therefore society's reluctance to recognise and condemn one of its own harmful traditional practices.

The fact only females receive legislative protection for any removal of the prepuce could thus be construed as sex discrimination as defined in Commonwealth legislation, as males, or males undergoing circumcision, are being treated less favourably than females only due to their sex.⁸⁰ This discrimination is one of the reasons why some public officials, such as Tasmania's Children's Commissioner Paul Mason, have called for the procedure to be banned.⁸¹

MEDICARE

As shown, infant male circumcision is a procedure that is not medically recommended and that many medical organisations and individuals are vocal against. The legality surrounding the ability of a parent to consent for an infant's circumcision is currently unclear in Australia, and there are also strong ethical issues surrounding the procedure. As this is the case, it seems contrary to public policy that the procedure is covered by Medicare.

On Medicare's web site, there is a list of what it does and does not cover. 'Most surgical and other therapeutic procedures performed by doctors'⁸² are covered but 'medical services which are not clinically necessary'⁸³ and 'surgery solely for cosmetic reasons'⁸⁴ are not. So why then does Medicare cover circumcision of a healthy infant, which is not by definition a therapeutic procedure, is not medically necessary and has been argued to be purely cosmetic in nature? No medical reason is required to be given to the doctor for the procedure to be performed.⁸⁵ In light of the

⁷⁷ Robert Darby, J Steven Svoboda, 'A rose by any other name? Rethinking the similarities and differences between male and female genital cutting' (2007) 21(3) *Medical Anthropology Quarterly* 301-23.

⁷⁸ OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, *Eliminating female genital mutilation: an interagency statement*, World Health Organisation (2008) <http://whqlibdoc.who.int/publications/2008/9789241596442_eng.pdf> at 19 September 2009.

⁷⁹ *Ibid* 4.

⁸⁰ *Sex Discrimination Act 1984* (Cth) s 5.

⁸¹ 'Children's Commissioner Wants Circumcision Banned', *ABC News* (Hobart), August 13, 2007. Available at <<http://www.abc.net.au/news/stories/2007/08/13/2002944.htm?site=hobart>>.

⁸² Medicare, *What Medicare Covers* (2009), Medicare Australia, <<http://www.medicareaustralia.gov.au/public/claims/what-cover.jsp>> at 22 September 2009.

⁸³ *Ibid*.

⁸⁴ *Ibid*.

⁸⁵ David Richards, 'Male Circumcision: Medical or Ritual?' (1996) 3 *Journal of Law and Medicine* 371.

body of medical opinion on the procedure, such as the RACP's most recent statement on circumcision, it is unclear why the procedure is still provided for under Medicare when he has no therapeutic value.

Public hospitals in five Australian states are now in line with current medical opinion; as infant circumcision is non-therapeutic, it is not performed in hospitals in Victoria, New South Wales, Tasmania, Western Australia and South Australia. The Victorian Department of Human Services explains that: 'public hospital treatment should be prioritised to treat patients who have a clinical need for surgery to improve their health... Victorian public hospitals no longer provide circumcision for non-medical reasons, as there is no scientific evidence to support routine circumcision of neonates'.⁸⁶ When South Australia implemented the same ban, South Australian's Health Minister John Hill said the reasoning for this was that male circumcision was purely 'cosmetic'.⁸⁷

Medicare's subsidy of this procedure is having the effect of legitimising it. Parents considering circumcision for their sons may be more likely to go ahead when they hear it is covered by Medicare, thinking that Medicare only covers therapeutic procedures and therefore circumcision must have some medical benefits. The financial benefit may also be of impact to some people. It is also possible that parents choose circumcision for religious or other non-medical reasons, yet still take advantage of the Medicare rebate. One Victorian study found that over half of the parents choosing circumcision did so simply for reasons of 'family tradition'⁸⁸ (despite the fact that this so-called 'tradition' is probably only one or two generations old). Medicare providing a rebate for parents for a non-medical procedure for reasons of family tradition or religion is akin to subsidising infant ear piercing, or African ritual face scarring.⁸⁹

However, as the procedure is non-therapeutic, Medicare's continuing coverage is going against current medical policy and opinion. As well as unnecessarily draining the country's resources to subsidise a non-recommended parental choice, the procedure is arguably causing harm to thousands of Australian infants as they lose part of their genitals and therefore their future choice about the surgery. Additionally, some of these boys require further surgery for complications, putting further strain on the country's medical system to fix the consequences from a procedure which was unnecessary in the first place.

CONCLUSION

Infant circumcision is a procedure that is not medically justified. Over the years more evidence has become available to demonstrate that it has few, if any, medical benefits. Throughout this time there have been reviews into the potential ways in which infant

⁸⁶ Victorian Government, *Guidelines for Male Circumcision in the Victorian Public Hospital System* (2007) <<http://www.health.vic.gov.au/surgery/circumcision/circumcision-guidelines-healthprof.pdf>> at 22 September 2009.

⁸⁷ Jill Pengelley, 'Cosmetic Circumcision Banned', *The Advertiser* (Adelaide), November 12 2008, <http://www.news.com.au/adelaidenow/story/0,22606,22741626-2682,00.html?from=public_rss> at 19 September 2009.

⁸⁸ Bo Xu, Hershel Goldman, 'Newsborn Circumcision in Victoria, Australia: Reasons and Parental Attitudes' 78(11) *Australian and New Zealand Journal of Surgery* 1019-1022.

⁸⁹ See *R v Adesanya* (1974; unrep) (UK).

circumcision could be a civil or criminal infringement, as well as arguments about the ethics of performing an unnecessary irreversible procedure on a patient who cannot consent. Yet, despite the overwhelming Australian medical opinion that circumcision is not necessary, and the fact the procedure is banned in the majority of public hospitals across the nation, Medicare continues to provide a rebate for the procedure, arguably in contravention of their very own guidelines. For years there have been calls for Medicare to end coverage of the procedure, yet so far no action has been taken. The time has come for Medicare to stop ignoring ignore the overwhelming medical opinion of the unnecessary nature of the procedure, and remove the rebate for infant circumcision.