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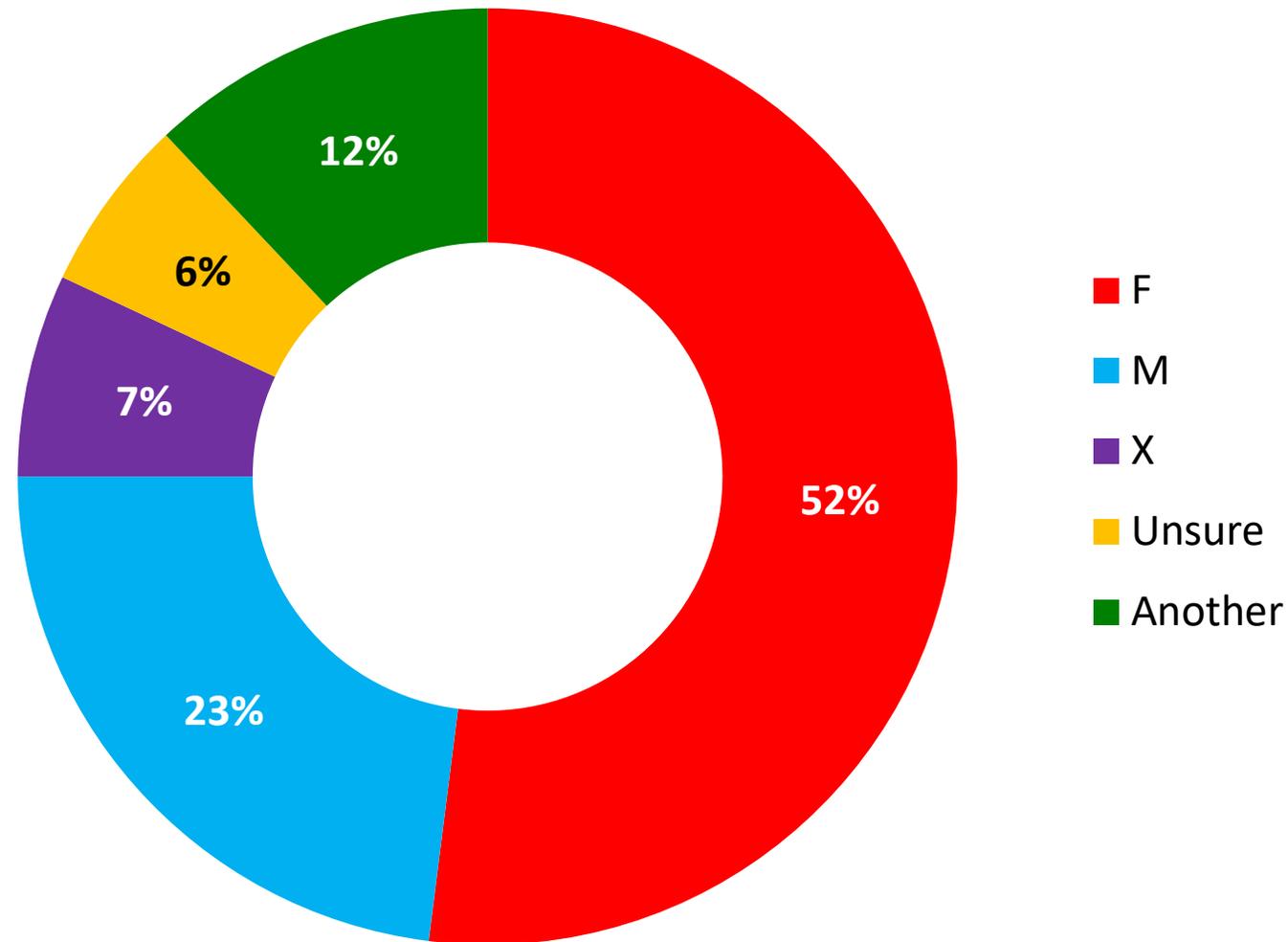
Who are the population?

“Intersex people are born with physical or biological sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit the typical definitions for male or female bodies. For some intersex people these traits are apparent at birth, while for others they emerge later in life, often at puberty.”

Office of the High Commissioner for Human Rights, African Commission on Human and Peoples’ Rights, Council of Europe, Office of the Commissioner for Human Rights, Inter-American Commission on Human Rights, Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, et al. Intersex Awareness Day – Wednesday 26 October. End violence and harmful medical practices on intersex children and adults, UN and regional experts urge. 2016.

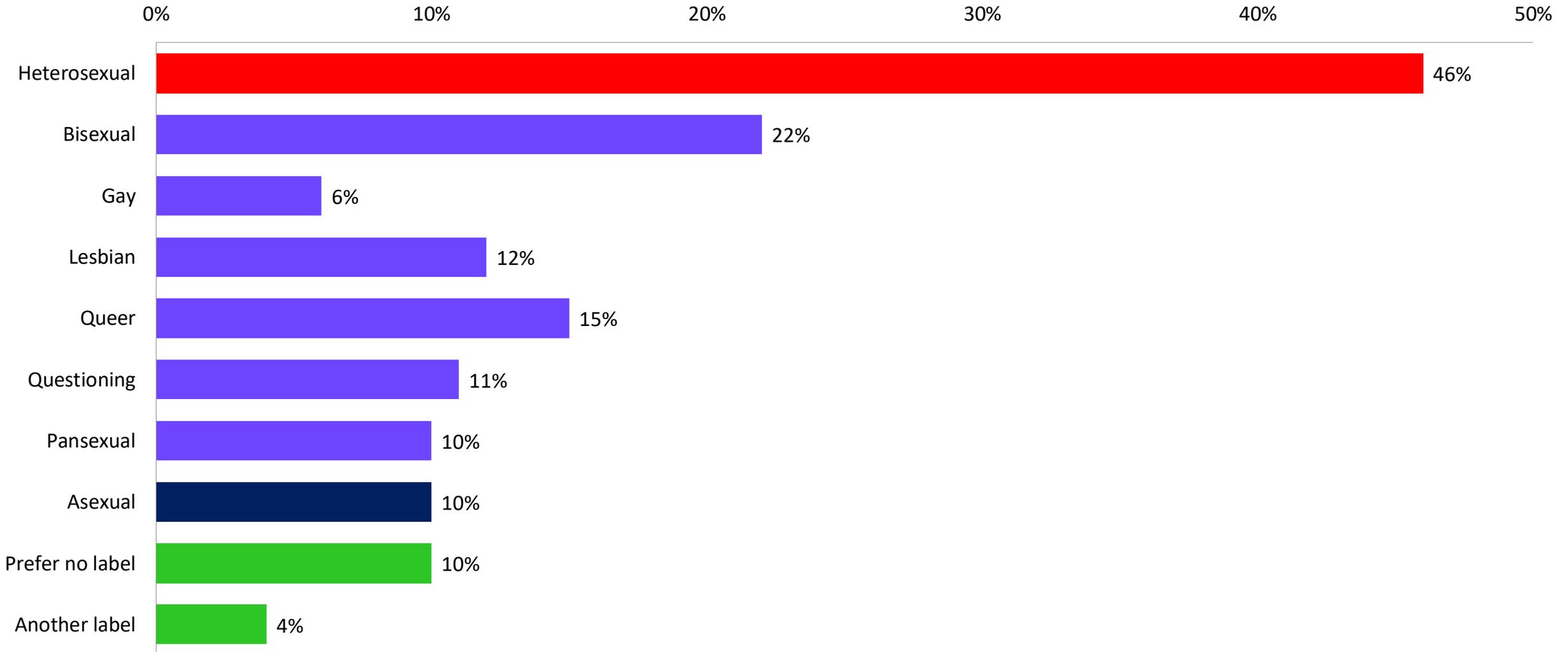
Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

Demographics of gender (Australian sociological study, 2015)



Jones T. Intersex and Families: Supporting Family Members with Intersex Variations. Journal of Family Strengths. 2017;17(2). Note: multiple choices possible

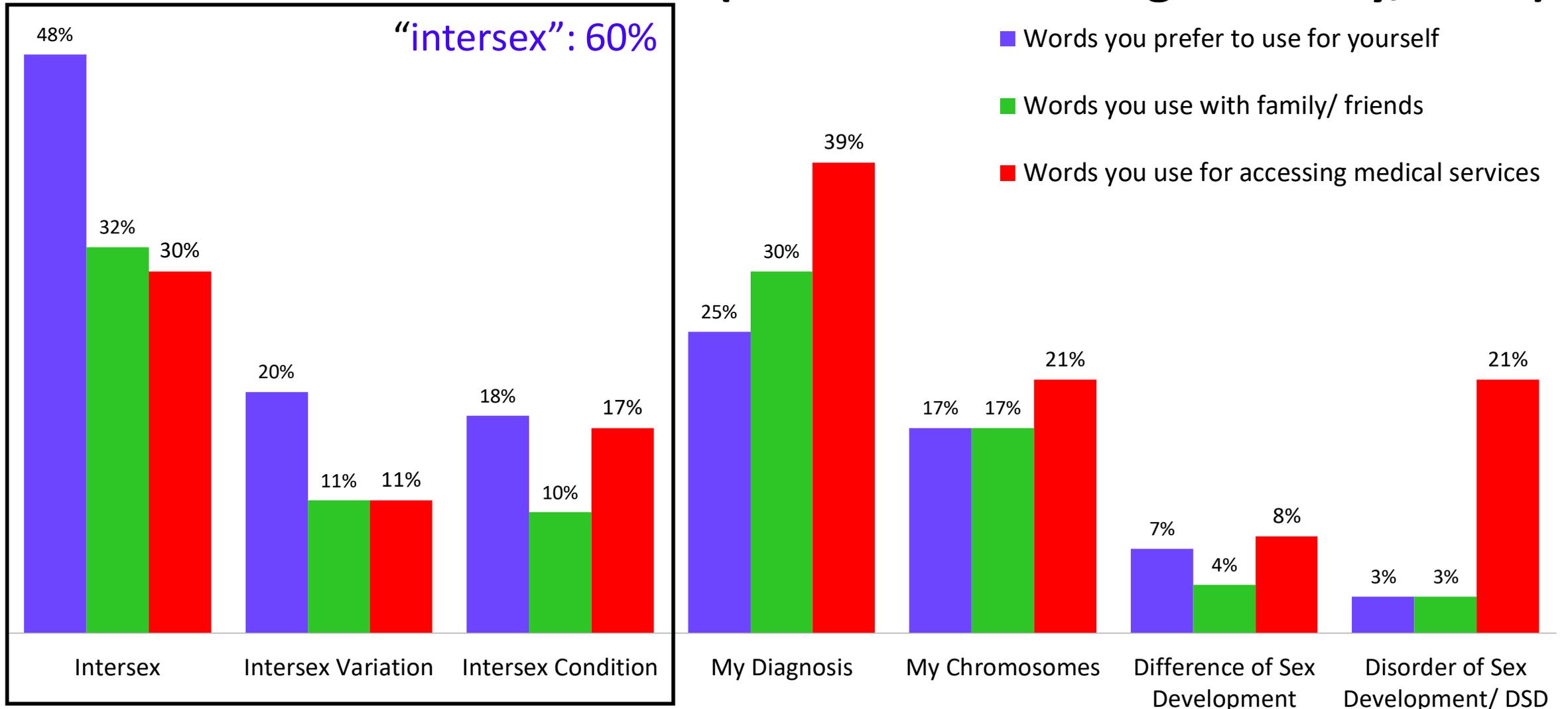
Demographics of sexual orientation (Australian sociological study, 2015)



Multiple choices possible; note response rate.

n=176

Words for sex characteristics (Australian sociological study, 2015)



Jones T. Intersex and Families: Supporting Family Members with Intersex Variations. Journal of Family Strengths. 2017;17(2). Note: multiple choices possible

Medical interventions (Australian sociological study, 2015)

“strong evidence suggesting a pattern of institutionalised shaming and coercive treatment”

60% received treatments on basis of sex characteristics, half at under 18 years of age

Majority experienced at least one negative impact from treatment

44% reported counselling/ training/ pressure from institutional practitioners (doctors, psychologists etc.) on gendered behaviour; 43% from parents

60% had thought about suicide, 19% had attempted it

ihra.org.au/demographics

Third sex model of intersex

“Many individuals are born with sex chromosome, endocrine or hormonal irregularities, and their birth certificates are inaccurate because in the United States birth records are not designed to allow doctors to designate an ambiguous sex.”

Wise N. Judge: Gender Laws Are at Odds with Science. Time. 2017 Mar 8. Available from: <http://time.com/4679726/judge-biological-sex-laws-marriage-bathrooms/>

Third sex markers in ACT address risks...

“...the availability of a third marker provides a level of flexibility for parents...

The availability of the third marker for children will also reduce the risk that parents will force their child to conform to a particular gender or subject them to gender assignment surgery or other medical procedure to match the child’s physical characteristics to the chosen sex.”

Letter from the Chief/Health minister in ACT, April 2014

...of standard practices in ACT, Victorian and NSW hospitals

“Currently in the ACT, in the event of a birth of a baby with a disorder of sex development (DSD), clinicians follow a standard investigation and management practice that is consistent with a national approach from the Australasian Paediatric Endocrine Group and international consensus statements from key disciplines such as paediatric endocrinology, surgery

“... it is recognised that surgery of this sort is best performed in centres of excellence. For this reason children with a DSD are normally referred to either Melbourne or Sydney.”

Letter from the Chief/Health minister in ACT, January 2014

“In early 2018, four years after implementation of the new ACT law, the government confirmed that no children have been assigned to a new sex classification.”

Carpenter, Morgan. 2018. ‘The “Normalisation” of Intersex Bodies and “Othering” of Intersex Identities’. In *The Legal Status of Intersex Persons*, edited by Jens Scherpe, Anatol Dutta, and Tobias Helms, 445–514. Cambridge, England: Intersentia. doi:[10.1017/9781780687704.028](https://doi.org/10.1017/9781780687704.028).

Medical model

“surgery for the purpose of appearance including reduction of an enlarged clitoris or repair or construction of a urinary outlet to the end of the penis ... for functional reasons such as to allow a male individual to urinate while standing, and for psychosocial reasons such as to allow the child to develop without the psychosocial stigma or distress which is associated with having genitalia incongruous with the sex of rearing ...

“limited evidence reporting long-term outcomes of early surgical management for reasons of appearance ... with particular concern regarding sexual function and sensation.”

Australasian Paediatric Endocrine Group. Submission to the Senate Inquiry into the Involuntary or Coerced Sterilization of People with Disabilities in Australia: Regarding the Management of Children with Disorders of Sex Development. 2013.

No evidence to underpin medical interventions

“There is still no consensual attitude regarding indications, timing, procedure and evaluation of outcome of DSD surgery. The levels of evidence of responses given by the experts are low...

“Timing, choice of the individual and irreversibility of surgical procedures are sources of concerns. There is no evidence regarding the impact of surgically treated or non-treated DSDs during childhood for the individual, the parents, society or the risk of stigmatization”

Lee PA, Nordenström A, Houk CP, Ahmed SF, Auchus R, Baratz A, et al. Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care. *Hormone Research in Paediatrics*. 2016;85(3):158-180.

Assurances of change: Queensland example

“Previously it was an accepted practice to assign the external genitalia of a child during their childhood, often through surgical intervention...

“Research and investigation now advises against any irreversible or long-term procedures being performed on intersex children, unless a condition poses a serious risk to their health”

Department of Communities. Engaging Queenslanders: A guide to working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) communities. 2012 Jan. Report No.: 2896-11 FEB12.

International Classification of Diseases 11 Foundation: example of 17 beta hydroxysteroid dehydrogenase 3 (17 β -HSD3)

“If the diagnosis is made at birth, gender assignment must be discussed, depending on the expected results of masculinizing genitoplasty. If female assignment is selected, feminizing genitoplasty and gonadectomy must be performed. Prenatal diagnosis is available for the kindred of affected patients if the causal mutations have been characterized.”

World Health Organization. 46,XY disorder of sex development due to 17-beta-hydroxysteroid dehydrogenase 3 deficiency. In: ICD-11 Foundation. 2018. Available from: <https://icd.who.int/dev11/f/en#/http%3a%2f%2fid.who.int%2ficd%2fentity%2f887793448>

Carpenter M. Intersex Variations, Human Rights, and the International Classification of Diseases. Health and Human Rights. 2018 Aug 1;20(2). Available from: <https://www.hhrjournal.org/2018/08/intersex-variations-human-rights-and-the-international-classification-of-diseases/>

Queensland: case study of a child with 17 β -HSD3

“born in 2010, is now five years of age and is about to start school ... Carla was born with a sexual development disorder” [1]

“Surgery already performed on Carla has enhanced the appearance of her female genitalia.” [2]

“In 2014, Carla underwent ... a ‘clitoral’ recession and labioplasty” [16]

“the proposed surgery for Carla involving the bilateral removal of her gonads (“gonadectomy”) ... may be authorised by either of Carla’s parents”

Re: Carla (Medical procedure) [2016] FamCA 7

Re: Carla (Medical procedure)

“a. Her parents were able to describe a clear, consistent development of a female gender identity;

“b. Her parents supplied photos and other evidence that demonstrated that Carla identifies as a female;

“c. She spoke in an age appropriate manner, and described a range of interests/toys and colours, all of which were stereotypically female, for example, having pink curtains, a Barbie bedspread and campervan, necklaces, lip gloss and ‘fairy stations’;” [15]

Re: Carla (Medical procedure) [2016] FamCA 7

Re: Carla (Medical procedure)

“d. She happily wore a floral skirt and shirt with glittery sandals and Minnie Mouse underwear and had her long blond hair tied in braids; and

“e. Her parents told Dr S that Carla never tries to stand while urinating, never wants to be called by or referred to in the male pronoun, prefers female toys, clothes and activities over male toys, clothes and activities, all of which are typically seen in natal boys and natal girls who identify as boys.” [15]

Re: Carla (Medical procedure) [2016] FamCA 7

Re: Carla (Medical procedure)

“it will be less psychologically traumatic for Carla if it is performed before she is able to understand the nature of the procedure” [30]

“Carla may also require other surgery in the future to enable her vaginal cavity to have adequate capacity for sexual intercourse” [18]

Re: Carla (Medical procedure) [2016] FamCA 7

Queensland: case study of hormone treatment

“she has not undergone stage one treatment, which comprises hormone blocking, because ... her body is incapable of naturally producing testosterone, or indeed, many other hormones.” [2]

“identified as female from a very early age. She has always resented being characterised as male” [5]

“At about age 12 or 13 she was prescribed testosterone in order to commence puberty” [6]

Non-compliant with testosterone treatment.

“It would seem fanciful to suggest that court authorisation was required before Kaitlin could be prescribed testosterone by Dr W in 2014” [19]

The present situation

“Medicine constructs intersex bodies as either female or male, while law and society construct intersex as neither female nor male...

“medicalisation is posed as a solution to stigma and othering, while legal othering is posed as a solution to medicalisation. Neither approach is grounded firmly in evidence.”

Carpenter M. The ‘normalisation’ of intersex bodies and ‘othering’ of intersex identities, the experience in Australia. *Journal of Bioethical Inquiry*. 2018;15(4). Available from: <https://doi.org/10.1007/s11673-018-9855-8>

Carpenter, Morgan. 2018. ‘The “Normalisation” of Intersex Bodies and “Othering” of Intersex Identities’. In *The Legal Status of Intersex Persons*, edited by Jens Scherpe, Anatol Dutta, and Tobias Helms, 445–514. Cambridge, England: Intersentia. doi:[10.1017/9781780687704.028](https://doi.org/10.1017/9781780687704.028).

Darlington Statement



“attempts to classify intersex people as a third sex/gender do not respect our diversity or right to self determination. These can inflict wide-ranging harm regardless of whether an intersex person identifies with binary legal sex assigned at birth or not”

Androgen Insensitivity Syndrome Support Group Australia, Intersex Trust Aotearoa New Zealand, Organisation Intersex International Australia, Eve Black, Kylie Bond, Tony Briffa, Morgan Carpenter, et al. 2017. ‘Darlington Statement’. Sydney, New South Wales. <https://darlington.org.au/statement>

“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, intersex standards of care** with full and meaningful participation by intersex community representatives and human rights institutions

“independent, effective **human rights-based oversight mechanism(s)**”

Androgen Insensitivity Syndrome Support Group Australia, Intersex Trust Aotearoa New Zealand, Organisation Intersex International Australia, Eve Black, Kylie Bond, Tony Briffa, Morgan Carpenter, et al. 2017. ‘Darlington Statement’. Sydney, New South Wales. <https://darlington.org.au/statement>

2013 Senate committee recommendations

“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...

“oversight of these decisions is required...”

“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.”

Community Affairs References Committee, Senate of Australia. 2013. Involuntary or Coerced Sterilisation of Intersex People in Australia.

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index

A turn to the human rights system

“Harmful practices

“(c) Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent, implement the recommendations made by the Senate in 2013 on the basis of its inquiry into the involuntary or coerced sterilization of intersex persons, provide adequate counselling and support for the families of intersex children and provide redress to intersex persons having undergone such medical procedures;”

Committee on the Elimination of Discrimination against Women. ‘Concluding Observations on the Eighth Periodic Report of Australia’, 25 July 2018.

“The Australian Human Rights Commission is undertaking a project to consider how best to protect the human rights of people born with variations in sex characteristics in the context of medical interventions... The project’s main aims are to:

a) document and analyse existing approaches to medical interventions involving people born with variations in sex characteristics in Australia and overseas; and

b) identify changes that should be made to these existing approaches, to ensure that decisions and processes regarding medical interventions involving people born with variations in sex characteristics respect and protect the human rights of those affected.”

Australian Human Rights Commission. 2018. ‘Protecting the Human Rights of People Born with Variations in Sex Characteristics in the Context of Medical Interventions Consultation Paper’.