



VICTORIAN INTERSEX OVERSIGHT PANEL: SUMMARY OF DRAFT PROPOSAL

This is a short summary of the draft proposal for a Victorian intersex oversight panel contained in our consultation paper. For full details of the scheme, please read our [consultation paper](#).

SCHEME BASICS

The proposed scheme would mean that any medical treatment which results in changes to a person's sex characteristics, where those changes are permanent or could only be reversed with further invasive medical treatment, cannot be performed on a person with innate variations of sex characteristics unless:

- they provide personal consent to the treatment; or
- it is urgent and necessary to save life, prevent serious damage to a person's health or prevent the person from suffering significant pain or distress.

In this proposed scheme, if a person does not have capacity to give their own consent to treatment (e.g. because they are not yet mature enough to understand what is proposed), an **oversight panel** (described further below) will also be able to allow treatments if those treatments cannot be deferred without causing harm to that person's health. The oversight panel will be able to do that through exemptions covering classes of treatment, or through helping facilitate the registration of an individual care plan.

An **individual care plan** is designed to facilitate a process, overseen by the panel and driven by employed support workers, where the person, their parents (or other guardians and carers), their clinicians and other experts are involved in exploring the pros and cons of proposed treatments and other alternatives, before the panel makes a decision to support or reject proposed treatment.

Male circumcision would not be covered under this proposed scheme.

HOW THE OVERSIGHT PANEL WOULD WORK

In this proposed scheme, the **oversight panel** is comprised of a specific mix of 9 members being:

- a chair who is a senior lawyer or former judge,
- 3 health professional representatives (being 2 clinicians and 1 allied health professional);
- 3 community representatives (being 2 people with variations of sex characteristics and 1 family member of a person with variations of sex characteristics);
- 2 other representatives (being 1 bioethicist; 1 human rights or children's rights expert).

The chair can substitute panel members from a reserve pool of members if a permanent panel member is unable to attend a meeting or if the issue before the panel requires an area of expertise or lived experience which is not represented by the permanent members on the panel.

Oversight panel

Chair (senior lawyer or former judge)

3x health professional representatives

3x community representatives

Bioethicist

Human rights or children's rights expert

Decisions of the panel require a majority of the panel to agree, with at least 7 out of the 9 members present at a meeting. However, to ensure that the voice of community representatives and health professionals are represented in all decisions, at least one community representative and one health professional member must be part of that majority.

To allow the panel to make individual decisions quickly, a **sub-panel** consisting of three members (including 1 health professional and 1 community representative) can also be assembled by the chair. Decisions by sub-panels must be made unanimously or the matter must be referred to the full panel for a decision. All sub-panel decisions can be appealed to the full panel for reconsideration.

All decisions of the full panel can also be **reviewed** by a court if the panel fails to comply with the legal requirements of the scheme. These include a requirement that the panel be satisfied that treatment cannot be deferred without harming the health of a person.

OTHER PARTS OF THE SCHEME

The proposed scheme also has several detailed proposals dealing with:

- how the oversight panel must make its decisions,
- criminal and civil consequences for breaches of the scheme,
- how confidentiality will be maintained, and
- how the scheme may interact with other laws and schemes, including if the scheme is adopted nationally in future.

WHAT THIS MAY MEAN FOR YOU



For **people with variations of sex characteristics**, the proposed scheme is intended to prioritise your right to decide what happens to your body, unless an emergency or other strictly health-related reason justifies non-deferrable treatment.



For **parents and legal guardians of children**, the proposed scheme is intended to provide access to an oversight process to support decision-making regarding your child's healthcare, but would mean that treatment which can be deferred without harming the health of your child, must be deferred until your child could decide for themselves whether they want that treatment.



For **clinicians**, the proposed scheme would mean you could not perform certain medical procedures unless you had consent from the person receiving the treatment, in strict emergencies, or where the treatment had the support of the oversight panel. The proposed scheme would also require you to provide the oversight body with reports about medical treatments performed in accordance with the exceptions allowed by the scheme, but protect you from any liability in making those disclosures in good faith.

HAVE YOUR SAY

1. Sign up to one of our **online workshops** for:
 - a. [People with innate variations of sex characteristics: Monday 19 July, 6pm-7:30pm](#)
 - b. [Families of people with innate variations of sex characteristics, including parents, guardians and carers: Monday 26 July, 7:30pm-9pm](#)
 - c. [Clinicians and health professionals: Friday 23 July, 8:30am-10am](#)
 - d. [Interested stakeholders: Wednesday 21 July, 3pm-4:30pm](#)
2. Provide us **confidential feedback** by email to Zoe.Barker@equalityaustralia.org.au before 31 July 2021.
3. Complete our [questionnaire](#) anonymously before 31 July 2021.

If you have direct experience and would prefer to speak privately with us, please contact Zoe Barker, via Zoe.Barker@equalityaustralia.org.au, before 31 July 2021 to arrange a time for a telephone call or videoconference.