Equality Australia
ABN: 20 609 977 764
info@equalityaustralia.org.au
equalityaustralia.org.au
Ph: (02) 7208 7922

22 January 2026

By email

SARC Secretariat
Parliament House
Spring Street, East Melbourne VIC 3002

sarc@parliament.vic.gov.au

SUBMISSION REGARDING HEALTH SAFEGUARDS FOR PEOPLE BORN WITH VARIATIONS IN SEX CHARACTERISTICS BILL 2025

Equality Australia seeks to contribute to the Scrutiny of Acts and Regulations Committee's (**SARC**) consideration of the Health Safeguards for People Born with Variations in Sex Characteristics Bill 2025 (**Bill**). We invite the SARC to consider this submission and to publish it on its website.

Equality Australia is a national LGBTIQ+ organisation dedicated to achieving equality for LGBTIQ+ people. Equality Australia brings together legal, policy and communications expertise, along with thousands of supporters, to address discrimination, disadvantage and distress experienced by LGBTIQ+ people.

In our view, the Bill:

- promotes human rights by protecting the bodily autonomy of intersex children, and
- the criminal offences provided for by this Bill are a reasonable and proportionate means of achieving this end, and are compatible with the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**), and does not trespass unduly on rights and freedoms.

OVERVIEW OF THE BILL

The Bill is aimed at setting out a framework for decision-making in relation to medical treatment for persons with innate variation in sex characteristics (**intersex people**), including safeguards to protect those who do not have legal capacity to consent to the treatment, including children.

As outlined in the Explanatory Memorandum, the Bill seeks to 'ensure that decisions about certain medical treatment are deferred until a person is able to give informed consent for themselves or, where that is not possible, are subject to rigorous, independent oversight'.

The mechanisms through which the Bill seeks to achieve its aim, as described in the Statement of Compatibility delivered by the Minister for Health include the following informed consent safeguards, including:

1. A framework for assessing a person's capacity to give informed consent before performing a medical treatment that modifies their sex characteristics.

2. A requirement for a registered medical practitioner to seek and obtain informed consent for a treatment, including by providing adequate information and a reasonable opportunity to make a decision.
3. The establishment of an independent specialist oversight panel, called the 'Restricted Medical Treatment Oversight Panel' (**Panel**), to hear and decide applications for approval of treatment plans authorising a medical treatment that will modify the sex characteristics of a person who does not have capacity to give informed consent.
4. A prohibition against knowingly or recklessly providing unapproved medical treatment in certain circumstances.
5. New oversight functions and enforcement powers to the Secretary of the Department of Health;
6. A requirement for health service providers to report the performance of certain medical treatments.

BILL PROMOTES HUMAN RIGHTS OF INTERSEX PEOPLE

The Bill directly addresses the human rights concerns raised by the Office of the United Nations High Commissioner for Human Rights in its recent report on *Discriminatory laws and policies, acts of violence and harmful practices against intersex persons.*[1] The implementation of these measures in state law represents a concrete step towards giving domestic effect to the recent United Nations Human Rights Council resolution on *Combating discrimination, violence and harmful practices against intersex persons* - a resolution which Australia co-sponsored.[2]

Firstly, the Bill promotes the right to protection from non-consensual medical treatment as set out in s 10(c) of the Charter. This provides that a person must not be subjected to medical treatment without that person's full, free and informed consent. While there are reasonable exceptions in the case of medical necessity for children who are unable to consent, the legislation will prevent treatment is for merely cosmetic or 'normalising' procedures which may lead to long term adverse effects on that person – decisions on this treatment would be left to be made by that person once they have the capacity to consent.

Preventing medically unnecessary and irreversible interventions on intersex children may also promote the rights set out in s 10(b) of the Charter, which protects individuals from cruel, inhuman or degrading treatment, particularly where such procedures result in ongoing pain, trauma, loss of bodily function or diminished autonomy.

The adverse impacts of medically unnecessary procedures on intersex children are outlined in our report, The Missing Voice: A Thematic Analysis and Stories of Ongoing Medical Interventions on Intersex Children in Australia, released in December 2025 (**Report**). This report was informed by documents relating to medical procedures performed on intersex children, acquired through freedom of information requests sent to every major children's hospital in each state and territory across Australia. This report found that:

- Intersex children continue to face a risk of harm from medical procedures that could be deferred until they have the capacity to provide informed consent,
- Non-medical reasons and unbalanced considerations, including cosmetic justifications, gender reinforcement, unbalanced assessment of medical risks or

[1] Human Rights Council, *Discriminatory laws and policies, acts of violence and harmful practices against intersex persons, Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/60/50 (8 August 2025), in particular paragraphs 10 – 14.

[2] Human Rights Council, *Combating discrimination, violence and harmful practices against intersex* persons, 55th Sess, Agenda Item 3 , UN Doc, A/HRC/RES/55/14 (21 March 2024, adopted 4 April 2024).

parental distress and confusion, repeatedly featured in treatment discussions without appropriate attention given to the risk of harm from medical intervention,

- The health system lacks a robust, independent framework to resolve complex cases involving intersex children, and
- Hospitals lack consistent, centralised processes and documentation practices that record treatment discussions and decisions, which makes it difficult to seek to rely upon available historic data to inform treatment recommendations.

Further anecdotal evidence of ongoing harm is provided in series of case studies from intersex people in the report, who experienced non-consensual medical interventions as a child and have faced ongoing physical, sexual and/or psychological issues as a result,[3] including examples from Victoria.[4]

By including safeguards against medically unnecessary or deferrable procedures, the law would better protect intersex children from discrimination, consistent with section 8 of the Charter, by deterring medical treatment aimed at 'normalising' intersex children on the basis of their sex characteristics, a protected attribute under the *Equal Opportunity Act 2010* (Vic). The Bill promotes several other human rights, including:

- The right to privacy under s 13, including bodily autonomy and personal integrity, by preventing arbitrary or unjustified interference with a child's body through non-essential medical interventions.
- The rights of children under s 17(2), by ensuring that the best interests of the child are treated as a primary consideration and that children are protected from irreversible medical treatment undertaken before they are capable of providing informed consent.

POTENTIAL CONFLICT BETWEEN PARENTAL AND CHILDREN'S RIGHTS

To the extent that the Bill may limit parental decision-making in relation to medical treatment for their child, engaging s 17(1) of the Charter, any such limitation is reasonable and demonstrably justified under s 7(2). The limitation pursues a legitimate purpose — the protection of children from serious and irreversible harm — and is proportionate to that purpose. It reflects the gravity and permanence of the risks associated with medically unnecessary interventions and appropriately prioritises the child's long-term rights, dignity and bodily integrity over parental preference, where those interests conflict.

It is well established in Australian case law that parents do not have unfettered discretion to authorise any medical treatment for their children. Parental authority is constrained by the need for it to be exercised in the child's best interests, as found by the High Court in *Secretary of the Department of Health and Community Services v JWB and SMB* (1992) 175 CLR 218 (***Re Marion***). This case involved a 14-year-old girl with an intellectual disability, severe deafness, epilepsy, among other conditions, rendering her unable to care for herself, whose parents unsuccessfully sought an order in the Family Court to perform a hysterectomy and an ovariectomy. On appeal, the High Court also held the treatment, given that its main objective of sterilisation is irreversible, requires court approval.

Where child and parental rights are in conflict, the Charter requires that child rights are paramount. The Victorian Supreme Court's Justice Bell has expressed this as follows:

[3] Report, 27-36.

[4] See the stories of Jade and Tony in the Report at 28, 32.

> '*[w]hile the best interests of children may be the paramount consideration, there may be other relevant interests to consider, such as the interests of parents. When that is so, the other interests are ultimately subordinate to the child's interests*'.[5]

The state is empowered to take steps to protect the best interests of children despite s 17(1), as has been demonstrated by a case involving the vaccination of children in care where it was against the wishes of parents.[6]

CRIMINAL OFFENCE IS AN APPROPRIATE RESPONSE

CRIMINAL OFFENCE PROVISION

Clause 7 of the Bill creates a criminal offence for a person who knowingly or recklessly provides restricted medical treatment to a protected person without authorisation under the Bill. The offence is intended to deter unauthorised and potentially harmful interventions on applicable persons who lack capacity to give informed consent to the relevant restricted medical treatment. The maximum penalty is 2 years' imprisonment or 240 penalty units.

The offence will apply even if a medical treatment decision-maker for the person, such as a parent or guardian, consents to the restricted medical treatment. The clause is central to the scheme's protective purpose, ensuring that restricted medical treatment is only provided to protected persons where there is either urgent necessity or independent approval by the Panel for that treatment.

Restricted medical treatment is defined as medical treatment (other than that prescribed not to be restricted), that permanently changes an intersex person's sex characteristics, or makes changes to that person's sex characteristics that are reversible only with further medical treatment. The term also includes making changes to an intersex person's sex characteristics, where that treatment is prescribed to be restricted medical treatment.

Urgent restricted medical treatment

Section 8 provides an exception for registered medical practitioners who believe on reasonable grounds that the restricted medical treatment is **urgently necessary** for a prescribed reason, including to save the person's life, prevent serious damage to health, or relieve or prevent significant pain or distress.

'[P]ain or distress' excludes actual or a perceived risk of discrimination or stigmatisation, or psychological or emotional pain or distress due to that.[7]

The effect of this clarification is that doctors will not be prosecuted for medical procedures performed on intersex children where those procedures are medically necessary, including to prevent or alleviate pain or distress.

Criminal responsibility would, however, arise where steps are taken to 'normalise' a child's body in order to pre-empt the possibility of future stigma or discrimination. This carve-out is necessary because of a documented history of medical practitioners performing medically unnecessary interventions on the basis that they would reduce stigma, without adequately weighing the significant risk that such interventions may themselves cause stigma, physical harm and long-term psychosocial harm to the child.

---

[5] *Secretary to the Department of Human Services v Sanding* (2011) 36 VR 221; [2011] VSC 42, [145]; see also *AMS v AIF* [1999] HCA 26; (1999) 199 CLR 160, 208.

[6] *ZD v Secretary to the Department of Health and Human Services* [2017] VSC 806.

[7] Bill, s 8(2).

Approved restricted medical treatment

A further exception in clause 9 provides that a person does not commit an offence under section 7 where they are a registered medical practitioner, and are providing the restricted medical treatment in accordance with an approved treatment plan, approved by an assessment committee, under section 32 of the Bill. This exception is important because it both incentivises and requires adherence to the new scheme, ensuring that decisions are subject to appropriate oversight.

ARE THE CRIMINAL PROVISIONS COMPATIBLE WITH HUMAN RIGHTS?

Section 17(a) of the *Parliamentary Committees Act 2003* (Vic) requires the SARC to consider whether a Bill enlivens one of the prescribed issues in that provision and to report the same to the Parliament of Victoria. Relevant to the present case is whether the Bill directly or indirectly: (i) trespasses unduly on rights or freedoms, or (viii) is incompatible with the human rights set out in the Charter of Rights and Responsibilities.

The criminal provisions in the Bill are neither incompatible with the Charter, nor unduly trespass on rights and freedoms for the reasons set out below.

These provisions are tightly confined and structured so that criminal liability should arise only in very exceptional circumstances that warrant the strongest possible response. A registered medical practitioner would face criminal consequences only where:

1. they deliberately or recklessly disregard the statutory approval framework; and then
2. proceed with restricted medical treatment in circumstances where the treatment is neither medically necessary nor urgent.

In practice, this would require a practitioner to ignore the available pathways for lawful treatment — including urgent treatment exceptions and independent approval through an authorised treatment plan — and to proceed with an intervention that is not even clinically required in the first place.

We note that any doctor falling foul of these provisions would likely be subject to professional discipline by the Australian Health Practitioner Regulation Agency and be civilly liable for medical negligence for proceeding with medical care that is unnecessary and potentially harmful. Proper adherence to the Bill's processes, and aligning with accepted standards of medical practice, will ensure that doctors acting in good faith are not exposed to criminal liability.

Medical professionals are already subject to legal requirements that may be enforced through criminal prosecutions in Victoria. Failure to criminalise this conduct would be inconsistent with the approach taken to protecting the rights of people in vulnerable situations in other types of treatment settings, such as:

- offences for carrying out special medical procedures without the consent of the Victorian Civil and Administration Tribunal (VCAT);[8]
- offences relating to the use and storage of gametes and embryos in fertility treatments;[9]
- offences relating to female genital mutilation[10]

[8] *Guardianship and Administration Act 2019* (Vic) s 147.

[9] *Assisted Reproductive Treatment Act 2008* (Vic) ss 26-37.

[10] *Crimes Act 1958* (Vic) ss 32-34A

- offences relating to breaches of the safeguards around voluntary assisted dying procedures;[11]
- offences relating to conversion practices;[12] and
- offences relating to administering medical research procedures without consent or without approval.[13]

Looking interstate, it is an offence in Queensland to perform or offer to perform a cosmetic procedure on a child.[14]

Criminalisation is the most effective way to achieve the legitimate objective of preventing unnecessary medical interventions on children in Victoria. The existence of criminal offences has a strong preventive effect because deliberate or reckless unlawful conduct is not insurable and is incompatible with ongoing medical registration.

Those practitioners who comply with the Bill's safeguards and accepted standards of medical practice can continue to practice and be insured, while those who knowingly operate outside the lawful framework face meaningful consequences.

The government has a duty to take reasonable and proportionate steps to prevent future harm, but also to acknowledge and respond to harm already done. In this context, the use of criminal law provides the strongest and clearest recognition of that harm, signalling that such conduct is no longer acceptable in Victoria today, and that children's bodily integrity must be protected as a top priority.

Finally, the two-year maximum penalty is not exceptional, either in length or because it applies to medical practitioners. Considering the lifelong harms that we know can emerge from unnecessary, non-consensual treatment on children, 2 years is relatively short with compared with other offences. For example, it is an offence, with the same maximum penalty, for a person to knowingly access the Victorian electronic patient health information system, without authorisation.[15]

RELEVANT CHARTER RIGHTS

The following rights are relevant to the criminal offence in the Bill, as set out in the Charter:

- right to fair hearing (Charter, s 24), and
- right to presumption of innocence (Charter, s 25(1)).

Right to fair hearing

There is nothing in the Bill to indicate that the right to fair hearing would be restricted by the criminal offence as it would be adjudicated by a court in Victoria.

Right to presumption of innocence

The SARC's Practice Note regarding the scrutiny of bills dated 26 May 2014 states that the Statement of Compatibility, where there is an exception to a criminal offence, including a defence, should state whether or not the exception places a legal onus on the accused. In the present case, clauses 8 and 9 of the Bill outline exceptions.

---

[11] *Voluntary Assisted Dying Act 2017* (Vic) ss 83-91

[12] *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic) ss 10-14

[13] *Medical Treatment Planning and Decisions Act 2016* (Vic) ss 84-85.

[14] *Public Health Act 2005* (Qld) s 213B.

[15] See *Health Services Act 1988* (Vic) s 134ZP(1).

While the Bill places a reverse evidential burden on medical practitioners to establish the application of an exception, reverse onuses do not generally limit the presumption of innocence. Section 72 of the *Criminal Procedure Act 2009* (Vic) requires the accused, when relying on an exception to an offence, to present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the exception.

The prosecution would still be required to prove each of element of the offence beyond a reasonable doubt. This allocation of the burden is logical, as only the defendant is likely to have access to the information necessary to demonstrate that they reasonably believed the treatment was 'urgently necessary' in the circumstances. Therefore, the criminal offence is not incompatible with the right to presumption of innocence.

Thank you for considering this submission. We welcome any further questions or discussion.

Kind regards

Heather Corkhill
Legal Director
Equality Australia