



Kirby Institute Seminar Series

ashm present selected seminars available via webinar

<https://ashm.org.au/training/kirby-seminar/>

These slides are for educational use only.

They may not be published, posted online, or used in commercial presentations without prior permission from the presenter.

Morgan Carpenter

Co-executive director at Intersex Human Rights Australia (formerly OIIAU) ihra.org.au

M.Bioethics (Sydney); PhD candidate in bioethics at Sydney Health Ethics, The University of Sydney
sydney.edu.au/medicine/sydney-health-ethics/

Justice of the Peace in NSW.

Home page: morgancarpenter.com



“The ALLY@UNSW network are trained staff and students that aims to ensure that UNSW is a safe and welcoming place for all students and staff who identify as LGBTIQ.”

UNSW. 2019. ‘LGBTIQ Support for Students & Staff | UNSW Current Students’. March 18. <https://student.unsw.edu.au/ally>

“Gender affirmation and transition support

“Intersex and transgender student support

“Transgender students who seek support before, during or affirming transition may choose to speak to an **Educational Support Advisor**. Educational support advisors can assist with referrals to services both on and off campus as well as liaise regarding administrative issues within the such names and identity. Educational support advisors can assist you to plan your transition.”

UNSW. 2018. ‘Gender Affirmation and Transition Support | UNSW Current Students’. July 17. <https://student.unsw.edu.au/ally/gender>

“The performance’s leading character, Carmen, is the fictional love-child of Leon Trotsky and Frida Kahlo, so naturally she has plenty of stories to relay. Viewers are presented with a bounty of visual delights... Carmen’s costume highlights her sexuality with a giant sparkling gem adorning her crotch, the lighting expertly sets the mood with hues of blue and pink...

“As an intersex person, Carmen, herself is ‘other’. And if you don’t know what ‘intersex’ means, do not fear! Carmen provides her audience with a practical and scientific definition of what it means to be intersex, as well as a moving account of what it can feel like to be an intersex person.”

Standish, Abigail. 2019. ‘Carmen: Live Or Dead’. *Arc UNSW Student Life*. Accessed March 13. <https://www.arc.unsw.edu.au/blitz/reviews/carmen-live-or-dead>



Standish, Abigail. 2019. 'Carmen: Live Or Dead'. *Arc UNSW Student Life*. Accessed March 13. <https://www.arc.unsw.edu.au/blitz/reviews/carmen-live-or-dead>

“UNSW Medicine believes that Lesbian, Gay, Bisexual, Transgender, Questioning and Intersex students and staff should be able to enjoy their time at UNSW and in our teaching facilities without experiencing any sense of alienation or ill-treatment at the hands of either fellow staff or students.

“The Faculty is well represented in the membership of ALLY@UNSW (<https://student.unsw.edu.au/ally>). The ALLY training program aims to make UNSW a great place for everybody by reducing barriers of fear and ignorance that lead to prejudice and discrimination. A full directory of ALLY members is available online (<https://student.unsw.edu.au/allies>).”

UNSW. undated. ‘LGBTQI | Medicine’. <https://med.unsw.edu.au/lgbtqi>

“How and why do things go wrong in development?”

“Human genital abnormalities are currently described as "Disorders of Sex Development" (DSD) and includes: chromosomal, gonadal dysfunction, tract abnormalities, external genitalia and gonadal descent.

“The previous human sex development terminology (true hermaphrodites, male pseudohermaphrodites and female pseudohermaphrodites) are considered outdated and stigmatising and have been replaced with the general term Disorders of Sex Development (DSD) established by the Consensus statement on management of intersex disorders.”

Hill, Mark. 2019. ‘Genital System - Abnormalities - Embryology’. March 12.
https://embryology.med.unsw.edu.au/embryology/index.php/Genital_System_-_Abnormalities

“complicity between the medical and the legal construction of variations of sex development as pathological disorders in urgent need of correction”

“tension between the medical and judicial responses to variations of sex development has disappeared”

Kennedy, Aileen. 2016. ‘Fixed at Birth: Medical and Legal Erasures of Intersex Variations’. *UNSW Law Journal* 39 (2): 813–42.

Medical and legal contradictions on the meaning and needs of intersex people

“Intersex bodies are “normalised” by medicine, while society and the law “other” intersex identities. That is, medicine describes intersex people as either female or male, with "disorders of sex development", while law increasingly regards the same people as neither female nor male.”

Medical and legal contradictions on the meaning and needs of intersex people

“Intersex bodies are “normalised” by medicine, while society and the law “other” intersex identities. That is, medicine describes intersex people as either female or male, with "disorders of sex development”, while law increasingly regards the same people as neither female nor male.”

Medical model of intersex: either/or

“disorders of sex development”

“congenital conditions in which development of chromosomal, gonadal, or anatomical sex is atypical ”

Hughes, I A, C Houk, S F Ahmed, P A Lee, and LWPES/ESPE Consensus Group. 2006. ‘Consensus Statement on Management of Intersex Disorders’. *Archives of Disease in Childhood* 91: 554–63. doi:[10.1136/adc.2006.098319](https://doi.org/10.1136/adc.2006.098319).

Third sex model of intersex: neither/nor

“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, Noël. 2017. ‘Judge: Gender Laws Are at Odds With Science’. *Time*, March 8. <http://time.com/4679726/judge-biological-sex-laws-marriage-bathrooms/>

These models are simplifications

Medicine describes intersex people as disordered females or males – but intersex women may not be female enough to compete in sport (unless they submit to medicalisation).

Law describes intersex people as neither female or male – but the welfare jurisdiction of the Family Court is “complicit” with medicine when approving “special medical procedures”.

Karkazis, Katrina, and Morgan Carpenter. 2018. ‘Impossible “Choices”’: The Inherent Harms of Regulating Women’s Testosterone in Sport’. *Journal of Bioethical Inquiry* 15 (4): 579–87. doi:[10.1007/s11673-018-9876-3](https://doi.org/10.1007/s11673-018-9876-3).

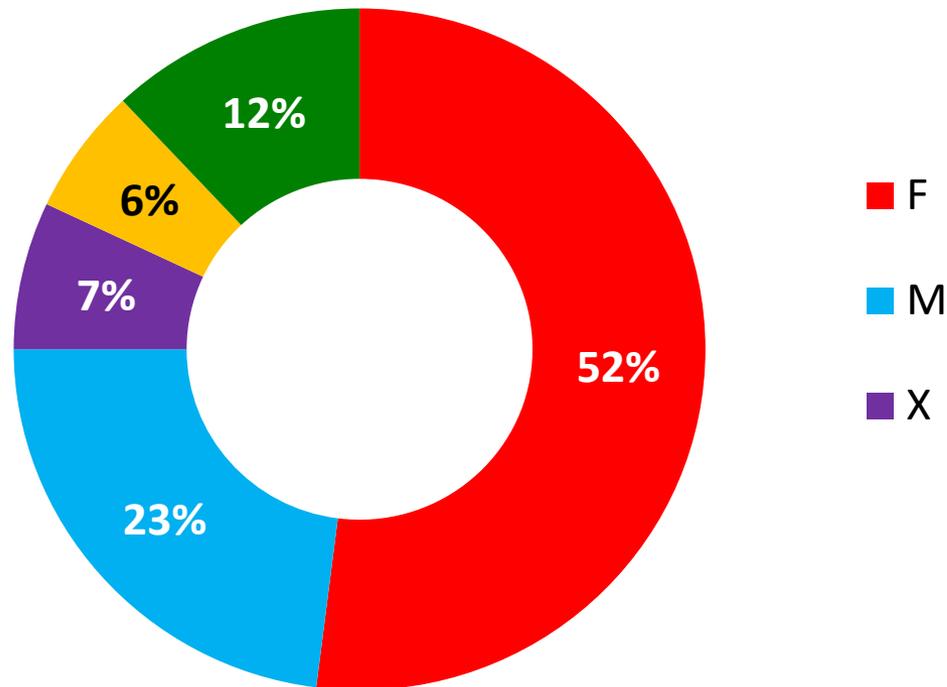
Kennedy, Aileen. 2016. ‘Fixed at Birth: Medical and Legal Erasures of Intersex Variations’. *UNSW Law Journal* 39 (2): 813–42.

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.”

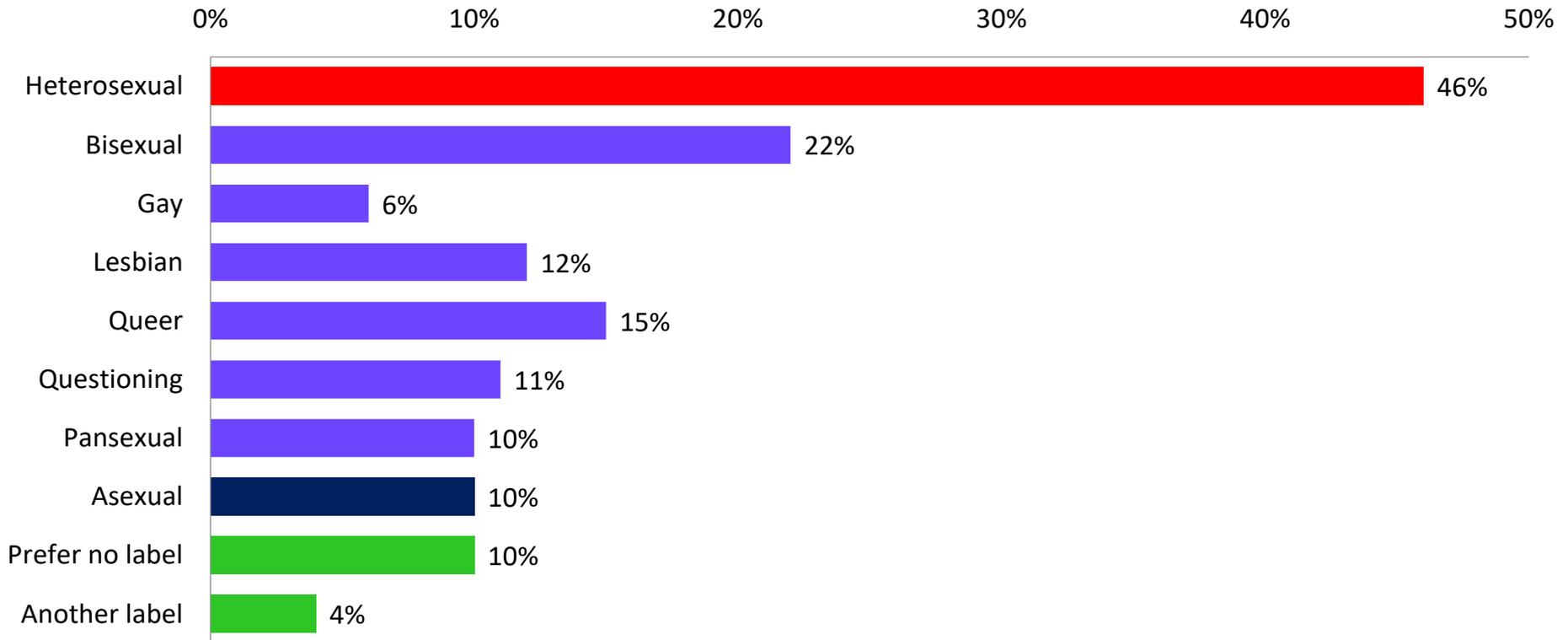
Office of the High Commissioner for Human Rights, African Commission on Human and Peoples’ Rights, Council of Europe, Office of the Commissioner for Human Rights, Inter-American Commission on Human Rights, Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, et al. 2016. Intersex Awareness Day – Wednesday 26 October. End violence and harmful medical practices on intersex children and adults, UN and regional experts urge. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

Demographics of gender (Australian sociological study, 2015)



Jones, Tiffany. 2017. 'Intersex and Families: Supporting Family Members with Intersex Variations'. *Journal of Family Strengths* 17 (2). Note: multiple choices possible

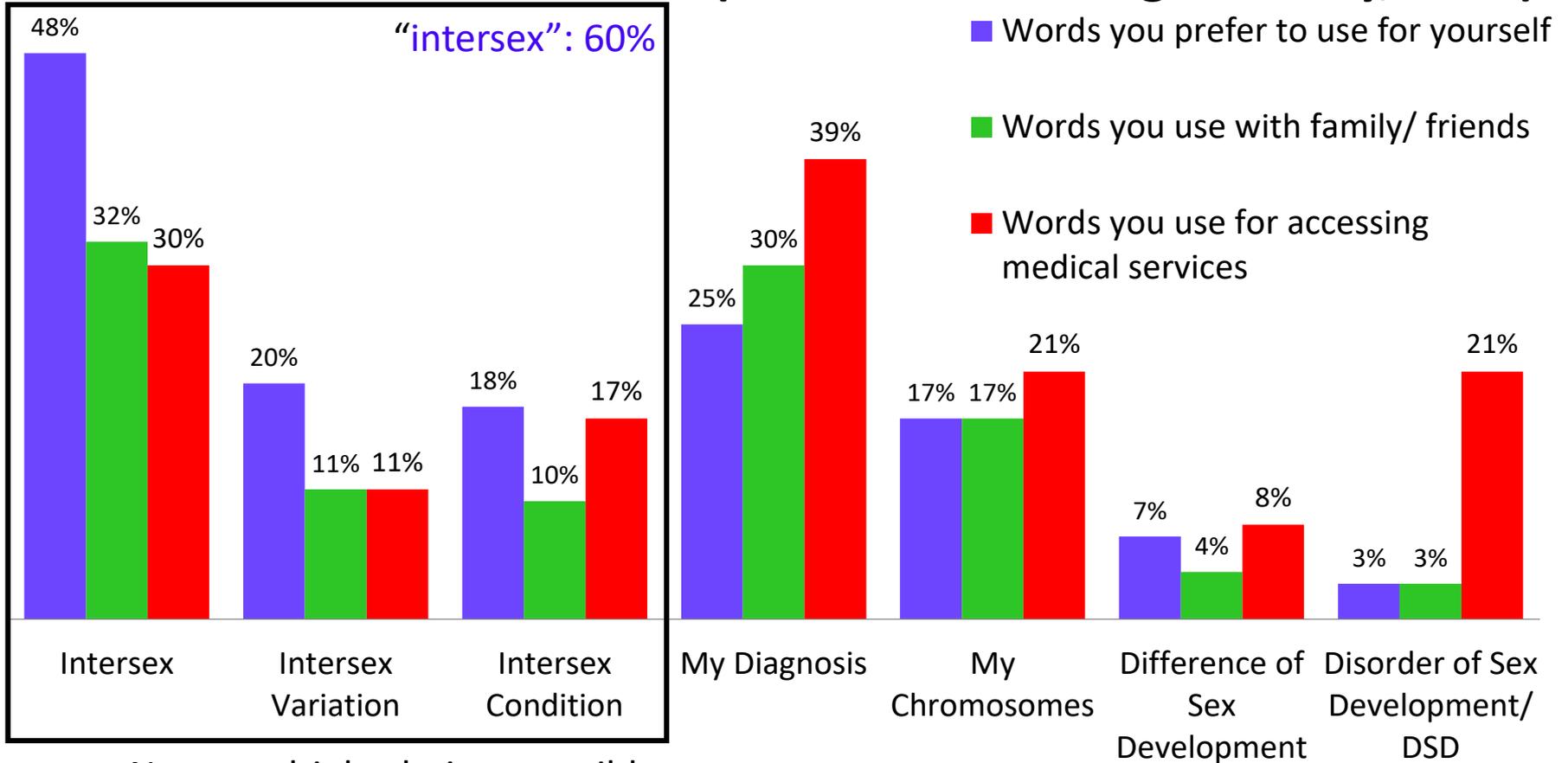
Demographics of sexual orientation (Australian sociological study, 2015)



Multiple choices possible; note response rate.

n=176

Words for sex characteristics (Australian sociological study, 2015)



Jones T. 2017. Intersex and Families: Supporting Family Members with Intersex Variations. *Journal of Family Strengths* 17 (2).

| Medical debate topic (percentages, n=170) | Strongly Agree | Agree | Neutral/ Unsure | Disagree | Strongly Disagree |
|---|---------------------------|--------------|----------------------------|-----------------|------------------------------|
| Children should have genitals that precisely match the sex they are reared as. | 2.9 | 5.3 | 16.5 | 20.0 | 55.3 |
| Genitals (e.g. clitorises/ penises) that do not fit a size 'norm', should be surgically altered in size. | 2.4 | 1.8 | 8.2 | 14.7 | 72.9 |
| Doctors should engage in surgical interventions on intersex kids, without knowing long term outcomes. | 1.8 | 0.6 | 5.3 | 12.4 | 80.0 |
| People should select against having intersex offspring (e.g. using IVF selection techniques). | 1.8 | 2.9 | 14.7 | 14.1 | 66.5 |
| Health providers should be able to apply interventions to my sex characteristics (such as surgeries, sterilisation or hormonal treatments) without my informed consent. | 2.4 | 0.6 | 5.3 | 8.8 | 82.9 |
| Adequate choices and information were given to my parents about my congenital sex variation when it was first diagnosed. | 4.7 | 4.7 | 22.4 | 14.1 | 54.1 |

Jones T. 2017. Intersex and Families: Supporting Family Members with Intersex Variations. *Journal of Family Strengths* 17 (2).

History: pre-medicalisation

“Every heire is either a male, a female, or an hermaphrodite, that is both male and female. And an hermaphrodite ... shall be heire, either as male or female, according to that kind of sexe which doth prevaile.”

Coke, E. The First Part of the Institutes of the Laws of England, Institutes 8.a. In Greenberg, Julie. 1999. ‘Defining Male and Female: Intersexuality and the Collision Between Law and Biology’. *Arizona Law Review* 41.
<http://ssrn.com/abstract=896307>.

Medicalisation of intersex bodies by western medicine

“in the late nineteenth and early twentieth centuries, ‘hermaphroditism] became virtually synonymous with immorality and perversion”

“Physicians in the 1880s and 1890s wanted their patients to understand their hermaphroditic conditions as deformities and not as a physical license to commit sexual immorality”

Reis, Elizabeth. 2012. ‘The Conflation of Hermaphrodites and Sexual Perverts at the Turn of the Century’. In *Bodies in Doubt: An American History of Intersex*, 55–81. Baltimore: Johns Hopkins University Press.

“I believe that we owe it to these poor unfortunates to impress upon them, as well as upon others, that they are not part man and part woman...

“The peculiarities which make them appear mixed, are only deformities like hair-lip or club-foot.”

Long, JW. 1896. ‘Hermaphroditism So-Called, with an Illustrative Case’. *International Journal of Surgery* 9 (8): 243–44.

1950s: early interventions and “imprinting” of gender role

“For neonatal and very young infant hermaphrodites we recommend that sex be assigned primarily, though not exclusively, on the basis of the appearance of the external genitalia and how well they lend themselves to surgical reconstruction in conformity with the sex of assignment”

Hampson, Joan G., John Money, and John L. Hampson. 1956.
‘Hermaphroditism: Recommendations Concerning Case Management’. *The Journal of Clinical Endocrinology & Metabolism* 16 (4): 547–56.
doi:[10.1210/jcem-16-4-547](https://doi.org/10.1210/jcem-16-4-547).

MJA 1966: shift to routine early interventions

“A's parents were told at his birth that he was a male, and that his gross phallic deformity could not be corrected until he was 16 years old. No doubt this advice was tendered by a disciple of the then popular but now rarely used method of delaying definitive treatment of hypospadias, with the use of an inlay graft, until the patient was approaching adult life. As often happens in such cases, by the time he was 16 years old the deformity had become so accepted, by both the parents and the patient, that no steps were taken to commence reparative surgery. In the meantime, he had led a normal life at school and had now commenced work.”

Fraser, Kenneth, M. J. J. O'Reilly, and J. R. Rintoul. 1966. 'Hermaphroditus Verus, with Report of a Case'. *Medical Journal of Australia* 1 (24): 1003–8.

1969: alternatives to medicalisation had to be imagined

“To visualize individuals who properly belong neither to one sex nor to the other is to imagine freaks, misfits, curiosities, rejected by society and condemned to a solitary existence of neglect and frustration...

“The tragedy of their lives is the greater since it may be remediable”

Dewhurst, Christopher John, and Ronald Roge Gordon. 1969. ‘Preface’. In *The Intersexual Disorders*, vii–viii. London: Baillière, Tindall & Cassell.

1993: technical considerations drive assignment

“Doctors who work with children with ambiguous genitalia sometimes put it this way: ‘You can make a hole but you can’t build a pole.’”

Hendricks, Melissa. 1993. ‘Is It a Boy or a Girl?’ *Johns Hopkins Magazine* 45 (6): 10–16.

No complaints

“Not one has complained of a loss of sensation, even when the entire clitoris had been removed”

Edgerton, Milton. 1993. ‘Clitoroplasty for Clitoromegaly Due to Adrenogenital Syndrome Without Loss of Sensitivity’. *Plastic & Reconstructive Surgery* 91 (5): 956.

Establishment of first advocacy group

“I find myself forced to wonder whether a concept of sexual normalcy that defines the sex organs of up to 4% of newborn infants as "defective" is not itself defective.”

Chase, Cheryl. 1993. ‘Intersexual Rights’. *The Sciences* 33 (4): 3.
doi:[10.1002/j.2326-1951.1993.tb03102.x](https://doi.org/10.1002/j.2326-1951.1993.tb03102.x).

1996: immediate attempts to discredit dissenters

“It is the unhappy ones, the disgruntled ones, doctors say, who have joined the intersex movement.

“ ‘zealots’ ”

Angier, Natalie. 1996. ‘Intersexual Healing: An Anomaly Finds a Group’.
The New York Times, February 4.

<http://www.nytimes.com/1996/02/04/weekinreview/ideas-trends-intersexual-healing-an-anomaly-finds-a-group.html>



Boston demonstration, 26 October 1996:
origin of Intersex Awareness Day

2006: reasserted clinical authority, and “DSD”
“disorders of sex development”

Hughes, I A, C Houk, S F Ahmed, P A Lee, and LWPES/ESPE Consensus Group. 2006. ‘Consensus Statement on Management of Intersex Disorders’. *Archives of Disease in Childhood* 91: 554–63. doi:[10.1136/adc.2006.098319](https://doi.org/10.1136/adc.2006.098319).

Rationales include parental distress and stigmatisation

“Rationale for early reconstruction includes beneficial effects of estrogen on infant tissues, avoiding complications from anatomic anomalies, satisfactory outcomes, minimizing family concern and distress, and mitigating the risks of stigmatization and gender-identity confusion of atypical genital appearance.”

Houk, C. P., I. A. Hughes, S. F. Ahmed, P. A. Lee, and Writing Committee for the International Intersex Consensus Conference Participants. 2006. ‘Summary of Consensus Statement on Intersex Disorders and Their Management’. *PEDIATRICS* 118 (2): 753–57. doi:[10.1542/peds.2006-0737](https://doi.org/10.1542/peds.2006-0737).

Feelings and beliefs

“It is generally felt that surgery that is carried out for cosmetic reasons in the first year of life relieves parental distress and improves attachment between the child and the parents. The systematic evidence for this belief is lacking.”

Hughes, I A, C Houk, S F Ahmed, P A Lee, and LWPES/ESPE Consensus Group. 2006. ‘Consensus Statement on Management of Intersex Disorders’. *Archives of Disease in Childhood* 91: 554–63.
doi:[10.1136/adc.2006.098319](https://doi.org/10.1136/adc.2006.098319).

(My emphasis)

2013: Australian clinician statement to Senate

“consensus statements ... describe recommended indications for genital and gonadal surgery in specific types of DSD...”

“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 ...”

Australasian Paediatric Endocrine Group. 2013. 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: Australian clinician statement to Senate

“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. 2013. 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.

2016: still no evidence

“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, Peter A., Anna Nordenström, Christopher P. Houk, S. Faisal Ahmed, Richard Auchus, Arlene Baratz, Katharine Baratz Dalke, et al. 2016. ‘Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care’. *Hormone Research in Paediatrics* 85 (3): 158–180.

doi:[10.1159/000442975](https://doi.org/10.1159/000442975).

Medicalisation saving a child from othering

“preserving the human rights of the child to self-determination... may actually threaten other human rights of the child such as the right to be free from discrimination. The latter would be uppermost in the minds of parents when contemplating the upbringing of a child whose sex remained indeterminate.”

O'Connor, Mike. 2016. 'The Treatment of Intersex and the Problem of Delay: The Australian Senate Inquiry into Intersex Surgery and Conflicting Human Rights for Children'. *Journal of Law and Medicine* 23 (3): 531–43.

Assurances of change: example from Australia (Queensland)

“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. 2012. ‘Engaging Queenslanders: A Guide to Working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Communities’. 2896-11 FEB12.

Case study: 17 β -hydroxysteroid dehydrogenase 3 deficiency

“Risk of germ cell malignancy according to diagnosis”

“Intermediate” risk

28% risk

“Monitor” gonads

Based on 2 studies where n=7 patients

Hughes, I A, C Houk, S F Ahmed, P A Lee, and LWPES/ESPE Consensus Group. 2006. ‘Consensus Statement on Management of Intersex Disorders’. *Archives of Disease in Childhood* 91: 554–63.
doi:[10.1136/adc.2006.098319](https://doi.org/10.1136/adc.2006.098319).

Changes since 2006 “consensus” statement

“Intermediate” 17% risk

“The multidisciplinary team at one German hospital told Amnesty International that, “The cancer risk even for the high risk groups is not so high. We can monitor with ultrasound and for tumour markers”

Pleskacova, J., R. Hersmus, J.W. Oosterhuis, B.A. Setyawati, S.M. Faradz, M. Cools, K.P. Wolffenbuttel, J. Lebl, S.L. Drop, and L.H. Looijenga. 2010. ‘Tumor Risk in Disorders of Sex Development’. *Sexual Development* 4 (4–5): 259–69. doi:[10.1159/000314536](https://doi.org/10.1159/000314536).

Amnesty International. 2017. ‘First, Do No Harm’. EUR 01/6086/2017. London: Amnesty International.

17 β -HSD3 in consensus statements

“Male assignment is recommended for ... 17 β -HSD3 deficiency, since >50% later switch to male.”

Gonadectomy associated with female or “unclear gender” in
“Undervirilization (46,XY ... testosterone synthesis disorders”

Lee, Peter A., Anna Nordenström, Christopher P. Houk, S. Faisal Ahmed, Richard Auchus, Arlene Baratz, Katharine Baratz Dalke, et al. 2016. ‘Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care’. *Hormone Research in Paediatrics* 85 (3): 158–180.
doi:[10.1159/000442975](https://doi.org/10.1159/000442975).

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

Carpenter, Morgan. 2018. ‘Intersex Variations, Human Rights, and the International Classification of Diseases’. *Health and Human Rights* 20 (2): 205–14.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6293350/>

Australian (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]

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

Australian (Queensland) case study of a child with 17 β -HSD3

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

“Dr C reports that the Consensus Statement for Management of Disorders of Sexual Development puts the risk of germ cell malignancy at 28% for Carla’s condition... Performing the proposed procedure would remove the risk of tumour development in the testes. This is one of, if not the major reason for undertaking the proposed procedure. [19]

“There are limited alternatives to the proposed procedure.” [20]

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

Re: Kaitlin

“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]

Re: Kaitlin [2017] FamCA 83

Third sex model: a first 'X' passport

“A quiet trailblazer from Perth’s Hills has become the first in Australia and probably the world to hold a passport acknowledging that not everyone is male or female.

“Alex MacFarlane, 48, is intersex and wanted a passport recognising it... Alex is 47XXY...

“A spokeswoman told The West Australian that, after reviewing the issue, the department had decided to accommodate people whose birth certificates recorded their sex as indeterminate.”

Butler, Julie. 2003. 'X Marks the Spot for Intersex Alex'. *Western Australian*, January 11.

Third sex model saving intersex people from medicalisation

“Some countries, like Germany, Malta, Australia and New Zealand, added the third box corresponded to gender on the birth certificates. It gives parents of intersex infants the right to choose the third option: marking the sex category “X” or “other”. By doing so, parents and doctors are not forced to put intersex babies through surgeries that would turn them into male or female. Thus, as intersex children grow up, they have the right to realise their identity by themselves.”

Kondratenko, Tatiana. 2016. ‘Born Intersex in Russia: The Right to Be Recognised’. *Prospekt Magazine*, December 21.

<http://www.prospektmag.com/2016/12/intersex/>

Third sex markers in ACT address risks...

“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 the marriage of C and D (falsely called C)

“The wife’s consent to the marriage was not a true consent because she was mistaken as to the identity of the husband at the time of the marriage. She believed that she was marrying a male whereas in fact she was marrying a combination of both male and female.

“Marriage as understood in Christendom is the voluntary union of one man and one woman to the exclusion of all others for life, and since the respondent was a combination of both, a marriage in the true sense could not have taken place and did not exist”

In the marriage of C and D (falsely called C) (1979) FLC 90-636.

“Decree of nullity of marriage of true hermaphrodite who has undergone sex-change surgery ”

“The problem raised by this case is that of determining, for the purposes of the law of marriage, the sex of a true trans-sexual who is “assigned” by surgical process to one of the biological sexes.”

Bailey, Rebecca J. 1979. ‘Family Law—Decree of Nullity of Marriage of True Hermaphrodite Who Has Undergone Sex-Change Surgery’. *Australian Law Journal* 53 (9): 659–65.

“A's parents were told at his birth that he was a male, and that his gross phallic deformity could not be corrected until he was 16 years old... As often happens in such cases, by the time he was 16 years old the deformity had become so accepted, by both the parents and the patient, that no steps were taken to commence reparative surgery.”

“A laparotomy... A double mastectomy...

“...he became enamoured of an attractive girl. However, he felt it would be unfair to contemplate marriage until his external genitalia were reasonably normal. At this stage he presented for surgical correction of his penile deformity”

Fraser, Kenneth, M. J. J. O'Reilly, and J. R. Rintoul. 1966. 'Hermaphroditus Verus, with Report of a Case'. *Medical Journal of Australia* 1 (24): 1003–8.

“Although *C and D* has since been authoritatively repudiated for reasons unrelated to the conclusion reached about the wider meaning of mistaken identity... [54]

“even if the broader test adopted by Bell J were to be applied in this instance, it would not afford the parties any advantage. In *C and D*, at the time of marriage, the husband was found to be a hermaphrodite: neither a male nor a female (at 528). The wife mistakenly believed she was marrying a man, so the marriage was void.” [55]

Tien-Lao & Tien-Lao [2018] FamCA 953 (21 November 2018)

New IAAF regulations

“The 2018 regulations state that legal categories ‘other than simply male and female’ now exist because people with intersex variations exist...

“The regulations deploy an outdated interventionist clinical framework, enforcing narrowed gender norms but now accommodating a third sex as punishment for those who resist medicalization of their bodies ”

Karkazis K, Carpenter M. 2018. Impossible “Choices”: The Inherent Harms of Regulating Women’s Testosterone in Sport. *Journal of Bioethical Inquiry*, 15(4). <https://doi.org/10.1007/s11673-018-9876-3>

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 M. The ‘normalisation’ of intersex bodies and ‘othering’ of intersex identities, the experience in Australia. In: Scherpe J, Dutta A, Helms T, editors. *The Legal Status of Intersex Persons*. Cambridge, England: Intersentia; 2018.

“This conflict arises from fundamentally different ideas about the meaning of intersex variations and how to name them, even while there is agreement about their fundamental characteristics.

“In response to this complex situation, an emerging advocacy and human rights consensus focuses on simple core demands, for self-determination and the right to bodily integrity, demanding an end to forced and coercive medical interventions, social prejudice, and stigma.”

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>

A turn to the human rights system...

“States must, as a matter of urgency, prohibit medically unnecessary surgery and procedures on intersex children.

“They must uphold the autonomy of intersex adults and children and their rights to health, to physical and mental integrity, to live free from violence and harmful practices and to be free from torture and ill-treatment.

“Intersex children and their parents should be provided with support and counselling, including from peers.”

Office of the High Commissioner for Human Rights, et al. (2016, October 24). Intersex Awareness Day – Wednesday 26 October. End violence and harmful medical practices on intersex children and adults, UN and regional experts urge. Retrieved from

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

Developments in Australia

2013: Intersex status added to federal anti-discrimination law; federal sex/gender guidelines; Senate Community Affairs Committee inquiry report on the *Involuntary or coerced sterilization of intersex people in Australia*

2017: Darlington Statement; Concluding observations by UN Human Rights Committee

2018: Concluding observations by CEDAW; commencement of Australian Human Rights Commission inquiry; commencement of Australian Law Reform Commission inquiry

Darlington Statement



<https://darlington.org.au/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>