Circumcision in Australia: Reforming the Law

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Submitted in fulfilment of the requirements of
the degree of Master of Laws.

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Declaration of Originality

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of my knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of the thesis, nor does the thesis contain any material that infringes copyright.

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Statement of Ethical Conduct

The research associated with this thesis abides by the international and Australian codes on human and animal experimentation, the guidelines by the Australian Government's Office of the Gene Technology Regulator and the rulings of the Safety, Ethics and Institutional Biosafety Committees of the University.

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Abstract

The thesis considers the application of Australian law to male circumcision and recommends law reform to improve its regulation. There are no specific laws that regulate the practice in Australia. Very few clear answers present themselves when the general law is applied to circumcision. The law suffers from inaccessibility, uncertainty, jurisdictional inconsistency, and problems with enforceability in its application to circumcision. It is also unable to respond in a timely and effective manner to problematic developments, and has not significantly assisted in fostering improved health and ethical standards for circumcisers.

The thesis discusses the application of criminal law, family law, private law and human rights to the practice of circumcision. It also discusses the legislation in foreign jurisdictions which specifically addresses male circumcision. The thesis adopts the analytical perspective of an implementation minded law reformer. This perspective is used to inform the critical analysis of the law and the law reform recommendations proposed. The perspective is pluralistic and concerned with formulating reforms that are designed for ready implementation.

The thesis recommends the enactment of a federal Circumcision Act, or mirror State and Territory Circumcision Acts. This legislation should establish a circumcision regulatory, monitoring and licensing body within the jurisdiction it operates in. The Act (or Acts) recommended distinguish between circumcision performed with patient consent, and circumcision performed upon incapable minors with parental consent. The thesis recommends, subject to specific exemptions, the prohibition of circumcision performed on incapable minors. The thesis also details law reform to improve the health and ethical standards of circumcisers in Australia.
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