

FACT SHEET

WHAT DOES VICTORIAN LAW SAY ABOUT FEMALE GENITAL MUTILATION?



the women's
the royal women's hospital

This fact sheet is about the law in Victoria regarding Female Genital Mutilation (FGM). FGM is also referred to by some people as “female circumcision” or “female cutting”.

What does the law say about FGM?

FGM is defined in the Crimes Act as follows:

“female genital mutilation” means all or any of the following –

- a. Infibulation
- b. The excision or mutilation of the whole or a part of the clitoris
- c. The excision or mutilation of the whole or a part of the labia minora or labia majora
- d. Any procedure to narrow or close the vaginal opening
- e. The sealing or suturing together of the labia minora or labia majora
- f. The removal of the clitoral hood.

Section 32 of the **Victorian Crimes Act 1996** states that to perform FGM is an offence.

A person cannot:

1. Perform female genital mutilation on a child.
2. A person must not perform on a person other than a child any type of female genital mutilation.

This means that it is against the law to:

- circumcise a woman, girl, young woman, or female baby;
- remove or cut out any part of the female genital area (‘excision’); or
- stitch up the female genital area (‘infibulation’); or
- cut the clitoris or part of the clitoris; or
- damage the female genital area in any of the ways set out above.

Section 33 of the **Victorian Crimes Act 1996** also states that it is an “Offence to take a person from the State with the intention of having prohibited female genital mutilation performed” and Section 34 states that “Consent is not a defence to a charge under sections 32 or 33”.

This means that it is also against the law to:

- help someone else perform these acts or
- get someone else to perform these acts or
- perform FGM because someone agrees e.g. parent or guardian to have them done
- take another person from the State, or arrange for another person to be taken from the State, with the intention of having prohibited FGM performed on the other person.

What happens if someone breaks the law?

Someone who performs FGM can be sent to prison for up to 15 years. The punishment is the same when a person helps someone else, or gets someone else, to perform FGM.

Are there any surgical procedures which are allowed?

Yes. Under **section 34A of the Crimes Act** an exception is made for a surgical operation which is –

- a. Necessary for the health of the person on whom it is performed and which is performed by a medical practitioner; or
- b. Is performed on a person in labour or who has just given birth, and for medical purposes or relief of physical symptoms connected with that labour or birth, and which is performed by a medical practitioner or midwife; or
- c. Is a sexual reassignment procedure which is performed by a medical practitioner

The law states that only issues related to the “medical welfare or relief of physical symptoms of the person” can be taken into consideration when deciding whether an operation is necessary for the health of a person.

Can we do FGM for cultural or religious reasons?

No. The only surgical operations allowed are those listed above.

Can we do FGM if the woman or girl agrees to it?

No. It is against the law to do FGM even if the woman or girl (or her parents or guardian) wants it done.

Can we go to another country or another part of Australia to do it?

No. If a woman, female baby, young woman or girl normally lives in Victoria, it is against the law to have FGM performed on her in another country or in another part of Australia.

Can we stitch up (re-infibulate) a woman after childbirth, or after any other type of gynaecological procedure?

Only a doctor can stitch a woman, girl or young woman if he/she decides that it is necessary for the woman’s health. Or a doctor or midwife may stitch a woman or girl if he/she decides that it is for medical purposes or to relieve physical symptoms connected with the woman or girl’s labour or birth.

Who has to report FGM in a child to the authorities?

In Victoria FGM is identified as child abuse. The **Children, Youth and Families Act 2005** s162 provides the legal definition for when a child is in need of protection. A child in the State of Victoria is anyone who is under 18 years.

For example, under s162 (c) if the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child’s parents have not protected, or are unlikely to protect, the child from harm of that type; or

Under s162 (e) if the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child’s emotional or intellectual development is, or is likely to be, significantly damaged and the child’s parents have not protected, or are unlikely to protect, the child from harm of that type then

The Act mandates a range of people in occupations working with children to make a report to the Secretary (DHS) if they “form the belief on reasonable grounds that a child is in need of protection” (s.184 **Children, Youth and Families Act 2005**). Those people mandated to report include: doctors, nurses, teachers, child care workers, and police, however anyone can make a report to DHS.

References

1. Children, Youth and Families Act 2005
2. Crimes (Female Genital Mutilation) Act 1996 –
<http://www.austlii.edu.au/au/legis/vic/bill/cgmb1996313/>

If you become concerned that a female baby or girl has had FGM performed on them or is at risk of having FGM being performed, you need to contact the Department of Human Services in your region or on 131278.