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SUMMARY OFFENCES AMENDMENT (TATTOOING AND BODY PIERCING) BILL 2008

An examination of issues relevant to the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008. The paper includes a summary of the Bill and a discussion of its proposed legislative changes within the current legal context in Victoria. It also discusses legislation related to the regulation of tattooing and body piercing of minors in other Australian jurisdictions.

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This Current Issues Brief is part of a series of papers produced by the Library's Research Service. Current Issues Briefs seek to provide an overview of a subject area for Members, and include information on key issues related to the subject.

NB: Readers should note that this paper was prepared prior to the passage of the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008 through the Victorian Parliament. It was passed by the Legislative Council on 9 September 2008. The Act was assented to on the 15 September 2008 (Act No. 49/2008). Readers interested in the Act as passed should visit the Victorian Legislation & Parliamentary Documents website at <http://www.dms.dpc.vic.gov.au/>.

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Introduction

There is currently no legislation in Victoria that specifically addresses the body piercing of persons under 18 years of age. Legislation concerning the tattooing and body piercing of children has been the subject of much debate in both the Legislative Council and more recently, the Legislative Assembly. On 17 July 2007, Mr. Damian Drum from the National Party moved a Private Member's Bill (the Summary Offences Amendment (Body Piercing) Bill 2007) in the Legislative Council for this purpose. The Government, however, drafted separate legislation after community consultation following a Draft Bill and a Discussion Paper on the issues concerned.

The Discussion Paper stated that the Government recognised that the proposed legislation on body piercing and tattooing 'raises complex legal, civil liberty and cultural issues' and therefore 'considers that broad community consultation is important to ensure that the legislation introduced into Parliament is fair and effective'.¹ The Government received around 130 submissions to the exposure draft and on 12 June 2008 the Attorney-General Rob Hulls gave the second reading for the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008 ('the Bill').

Second Reading Speech

In accordance with section 28 of the Charter of Human Rights and Responsibilities ('the Charter'), the Attorney-General first detailed how the Bill impacts and limits certain rights contained within the Charter. These are:

- *Section 8(3): recognition and equality before the law.* The Bill restricts the availability of certain body piercings and other body modification procedures on the basis of age.
- *Section 15: freedom of expression.* The Bill interferes with young people's right to freedom of expression.
- *Section 19: cultural rights.* The Bill restricts access to certain types of body art that may have cultural motivations or cultural significance.
- *Section 25(1): right to be presumed innocent.* A person charged with a body piercing offence under the proposed legislation bears the legal onus of establishing the defence that evidence of age documentation had been sighted at the time of the offence.

The Attorney-General acknowledged that the above rights are not absolute but are subject to reasonable limitations pursuant to section 7 of the Charter. As the nature of the limitations are in place to protect the health and wellbeing of young people, the Attorney-General considers that the Bill is compatible with the Charter. It also engages other rights contained in the Charter such as the protection of families and children (s. 17).

In terms of the limitations on cultural rights, the Attorney-General stated that public comment on the Exposure Draft indicated that any impact on cultural groups would be minimal given that persons aged under 16 years can continue to obtain non-intimate body piercings with parental consent. Regarding scarification, which is a procedure that often bears cultural significance and would be prohibited on persons aged under 18 years, the Attorney-General noted that community consultations on the Draft legislation did not reveal evidence of this practice occurring in Victoria.

¹ Department of Justice (DOJ) (2008) *Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft Discussion Paper*, Melbourne, DOJ, p. 3.

The Bill's primary focus, according to the Attorney-General is to protect the health and wellbeing of young people and encourages young people to discuss body piercing with their parents or guardians, thereby equipping 'young people to make informed choices and to manage the consequences of those choices'.

1. About the Bill: Main Provisions

The main provisions of the Bill, which amends the *Summary Offences Act 1966* ('the Act'), are:

- To prohibit the practices of scarification, tongue splitting, branding and beading on persons under the age of 18 years;
- To increase the maximum penalty for the offence of tattooing of persons under the age of 18 years;
- To prohibit the intimate body piercing of persons under the age of 18 years; and
- To insert new offences concerning other body piercing of persons under the age of 16 years.

Definitions

Tattooing – refers to the permanent insertion of ink or other pigments below the skin using a sharp instrument.

Body Piercing – refers to the piercing of the human body to create one or more entry holes, or entry and exit holes, for the insertion of an object.

Scarification – involves the piercing of the skin to create a scar. Unlike a tattoo, scarification has a raised texture and is considered a more organic art form to tattooing. As a form of body art, it has been used mostly among equatorial people.²

Branding – means the application of heat, cold or a substance to the skin of a person to produce scar tissue. It usually involves the use of a metal cast heated to 800c or electrocautery pencil to create a third-degree burn. As it heals, scar tissue remains in the shape of the image that has been burned into the skin. It is a practice that has historically been used to mark slaves and criminals, but has been growing in popularity in Australia, particularly in the last few years.

Beading – refers to the cutting of the skin of a person and the insertion of an object beneath the skin to produce a lump. Melbourne piercing studio, The Piercing Urge, have reported an increase in the last few years of genital beading.³

Tongue splitting – means the cutting of the tongue of a person to divide the tongue, or part of the tongue, into two or more segments. It is also known as forking the tongue and gives the tongue the appearance of a snake or a lizard.

² S. Guynup (2004) 'Scarification: Ancient Body Art Leaving New Marks', *National Geographic News*, July 28.

³ For further information see The Piercing Urge (2008) viewed 12 May 2008 at <<http://www.thepiercingurge.com.au/>>.

2. Background

An Australian survey conducted in 1998 revealed that one in 10 people aged 14 years and over have had a tattoo at some point in their lives and 8 per cent have some form of body piercing, *excluding* ear piercing.⁴ One in three people aged 14 years and over reported having their ears pierced at some point in their lives (with 44.4 per cent of women having their ears pierced). Body piercing has become the fastest growing form of body decoration, particularly among the young.⁵

The issues related to the tattooing and body piercing of minors have been raised by Members on both sides of both Houses. For many MPs, these issues have been driven by constituent complaints and petitioning to their local representatives. It has also followed a review of related legislature in the states and territories, following the growing prevalence of body piercing in young people.

Unlike tattooing, there is no statutory offence dealing with body piercing, with the exception of a number of general offences that may be relevant in certain circumstances, such as offences against the person, including:

- Assault and aggravated assault under sections 23 and 24 of the Summary Offences Act;
- Causing injury or serious injury intentionally, recklessly or negligently, and endangerment offences under sections 16, 17, 18, 23 and 24 of the *Crimes Act 1958*; and
- Female genital mutilation under section 32 of the Crimes Act.

In practice, many piercing studios may ask for parental consent prior to performing piercings but there is no legislation prohibiting the body piercing of persons under the age of 18 years.

Body piercing can be more difficult to regulate than tattooing because of the range of piercings available and variety of places in which a person may obtain a body piercing, such as pharmacies, or hair or beauty salons.

In 2001, the Scrutiny of Acts and Regulations Committee (SARC) conducted a review of redundant and unclear legislation in their inquiry into the Summary Offences Act. While the Committee's terms of reference were limited to addressing the Act in its entirety and not specifically an inquiry into tattooing and body piercing, the Committee found that the provisions contained within the Summary Offences Act were ineffective and not appropriate to be included within this Act. The Committee advised that a wider review of tattooing and body piercing be conducted.

⁴ T. Makkai & I. McAllister (2001) 'The Prevalence of Tattooing and Body Piercing Amongst the Australian Community,' *Communicable Diseases Intelligence*, vol. 25, iss. 2, pp. 67-72.

⁵ *ibid.*

3. Discussion

Age of Consent

At the age of 16, a young person may consent to a sexual relationship (s. 48 of the Crimes Act) and may also consent to medical treatments which they are capable of fully understanding. At 18, a person may refuse medical treatment (s. 5(1)(d) of the *Medical Treatment Act 1988*).

There are a number of laws restricting the activities of young people, such as the *Tobacco Act 1987*, the *Liquor Control Reform Act 1998*, the *Casino Control Act 1991*, the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*, the *Gambling Regulation Act 2003* and the *Marriage Act 1961*. Such restrictions are considered necessary for the protection of young people.

The proposed legislation restricting the ability of young people to obtain tattoos increases the penalty in section 42 of the Summary Offences Act from 5 penalty units to 60 penalty units for the offence of tattooing a person under the age of 18 years. Clause 4 of the Bill inserts a new division into the Act (Division 6), making it an offence punishable by 60 penalty units to:

- perform a body piercing on the genitalia, anal region, perineum or nipples of a person under the age of 18 years, or
- allow a person under the age of 16 years to perform a body piercing on the genitalia, anal region, perineum or nipples of a person under the age of 18 years.

Furthermore, in relation to non-intimate body piercing, 20 penalty units are allocated to the offences of:

- performing a body piercing on a person under the age of 16 years unless written consent has been given in person to the body piercer by:
 - a) a parent or guardian of the person to be pierced; and
 - b) if the person to be pierced is of or over the age of 10 years and has capacity to consent, that person.
- employing, directing or allowing a person under the age of 16 years to perform a body piercing on another person under the age of 16 years without the written consents required (in Clause 4).

The Discussion Paper states that extending the offence of tattooing a person under the age of 18 from 5 penalty units to 60 penalty units 'better reflects the gravity of this offence' and that it maintains 'an appropriate penalty relativity with the proposed body-piercing offences'.⁶ Other Acts that restrict the activities of young people carry penalties and it is useful to draw comparisons with these when assessing the appropriateness of applying the proposed level of penalty. The following table outlines some of the Acts affecting young people and the penalties applied to offences related to these Acts.

⁶ DOJ (2008) op. cit., p. 21.

Table 1: Offences and Penalty Units Related to Acts Affecting Young Persons

Act	Offence	Penalty units⁷
<i>Tobacco Act 1987</i>	Supplying a tobacco product to a minor (s. 12(1)) ⁸	50 penalty units
	Purchasing a tobacco product for the use of a minor (s. 12(2))	20 penalty units
	Permitting a minor to obtain a tobacco product from a vending machine (s. 12(3))	50 penalty units
	Failing to have prescribed signage relating to the prohibition of the sale of tobacco products to minors for tobacco selling retail outlets (s.15C(3))	10 penalty units
	Selling a tobacco product to another person in any area or premises while an underage music/dance event is taking place there (s. 15J) ⁹	50 penalty units
<i>Liquor Control Reform Act 1998</i>	Supplying liquor to minors (s. 119(1), s. 119(2), s. 119(3)), exceptions apply, such as where the person underage is accompanied by a parent or guardian (s. 119(5))	60 penalty units (or 10 penalty units for an employee of a licensee, s. 119(4))
	Allowing minors on a licensed premises if not accompanied by a responsible adult, on the premises for the purpose of partaking of a meal or a resident of those premises (s.120(1))	60 penalty units
	Sending a minor to obtain liquor (s. 121)	60 penalty units
	Permitting a minor to supply liquor (except where the minor is engaged in an approved training program) (s. 122)	60 penalty units
	Making false evidence of age documents, giving a minor an evidence of age document issued to another person, providing false or misleading information in procuring a proof of age card, or defacing or interfering with such documents (s. 124, s. 125)	20 penalty units
<i>Casino Control Act 1991</i>	A minor must not enter a casino or use false evidence of age in order to obtain entry (s. 84, s. 88)	10 penalty units
	If a minor enters a casino, the casino operator is guilty of an offence (s. 85)	20 penalty units

⁷ From 1 July 2004, the *Sentencing Act 1991* (s. 110) which previously outlined the value of penalty units was changed to create a new system and a new act (the *Monetary Units Act 2004*, see s. 5(3)) which allowed the Treasurer to set the value of penalty units (and fee units) based on the financial year. For the year ending 30 June 2009, the penalty unit is \$113.42, meaning that the offence described in s. 42 of the Summary Offences Act would be increasing from a maximum penalty of \$567.10 (5 penalty units) to \$6,805.20 (60 penalty units). A list of current penalty units can be found at the website of the Office of the Chief Parliamentary Counsel at <www.ocpc.com.au>.

⁸ Minor refers to a person under the age of 18.

⁹ The Tobacco Act explicitly states that a person under the age of 18 years cannot commit an offence if he or she contravenes a provision in relation to section 15J (s. 15K).

	Insufficient notices displayed with respect to the exclusion from the casino of minors (s. 89)	20 penalty units
<i>Gaming Regulation Act 2003</i>	Betting with a minor or inviting a minor to bet (s. 2.5.12)	15 penalty units or imprisonment for 3 months or both
<i>Firearms Act 1996</i>	Disposal of firearms to minors (s. 136)	240 penalty units or 4 years imprisonment

Table 1, above, demonstrates how minimal the current penalties are for tattooing a minor in comparison to penalties allocated for other offences involving minors.

The above Acts also list offences by minors, such as the Liquor Control Reform Act which states that a minor must not purchase or receive liquor, possess or consume liquor and must not enter or remain in a licensed premises (5 penalty units) (exceptions in s. 123(c)). A minor must also not falsely represent himself or herself to be of or over the age of 18 years (5 penalty units) (s. 123(4)). No similar offences are applied to the Summary Offences Act in relation to a minor illegally seeking a tattoo or body piercing. In terms of enforcing the proposed legislation, police are generally limited in their ability to request proof of age from anyone they suspect is underage in a tattooing business as the person being tattooed is not committing an offence.

The Tobacco Act also allows for the managers of the 'primary offender' (such as employees in the case of a business selling tobacco products) to be liable for an offence related to the above *regardless* of whether the primary offender has been convicted of an offence (s. 12(3A) and 12(3B)) unless the manager can prove that:

- an evidence of age document had been sighted (s. 12(4)(c));
- the manager had no knowledge of the primary offence (s. 12(4)(d)(i)); and
- that preventative measures (i.e. educating staff about laws pertaining to underage smoking) had been taken in relation to the primary offender (s. 12(4)(d)(ii)).

This is similar to an offence in the Liquor Control Reform Act whereby a licensee or permittee is guilty of an offence if liquor is supplied to a person under the age of 18 years on the licensed premises (60 penalty units, s. 119(2)). No equivalent provisions are contained within the proposed legislation on regulating the tattooing and body piercing of young people.

Youth Employment in the Body Piercing and Tattooing Industry

The Bill specifically addresses youth employment in clause 4 in which it clarifies that it is an offence to:

- allow a person under the age of 16 years to perform a body piercing on the genitalia, anal region, perineum or nipples of a person under the age of 18 years (60 penalty units), and to;
- allow a person under the age of 16 years to perform a body piercing on another person under the age of 16 years without the written consents required (20 penalty units).

It is necessary that the Bill includes this provision as other legislation does not address youth employment in the body piercing and tattooing industry, such as the *Child Employment Act 2003*, which regulates the employment of children aged under 15 years.

Exceptions in the case of youth employment are also made in other Acts, such as the Liquor Control Reform Act whereby a licensee may provide packaged liquor to an underage employee or apprentice (of the licensee) for the purpose of delivering that liquor to a person of or over the age of 18 years for consumption off the licensed premises (s. 119(5)(d)).

Exemptions

The restrictions to tattooing and body piercing do not apply to legitimate therapeutic procedures performed by health professionals, for example suturing or acupuncture.¹⁰

Social Context and Cultural Issues

Tattooing, body piercing and like processes have been found in many cultures throughout history.¹¹ Such practices are embedded in rites of passage and identification practices and have fulfilled purposes of adornment, sexual, religious or spiritual roles. Tattooing, scarification and like processes have been used to convey emotional states, such as creating scars in times of sorrow or to celebrate important life stages. This form of body modification has also been used to mark slaves and criminals, identify gang allegiance or sexual subcultures or to evoke a cultural nostalgia.¹² It can be an expression of cultural identity, community status or indicate connection to ancestors or gods. It has also been employed as a method of 'reclaiming the body' following abuse, particularly sexual abuse.¹³

Indigenous cultures, such as the Maori men of New Zealand etched deep tattoos over their entire faces to mark identity, make the men look fierce in battle and appear attractive to women.¹⁴ Scarification, beading and branding are considered important rites of passage in certain cultural communities, such as tribes in Papua New Guinea's Sepik region, some Australian Aboriginal communities and Ethiopia's Karo tribe. Body decoration may be humanity's oldest art form and most ancient method of expressing personal and communal spiritual beliefs despite Western cultures typically viewing people who obtain tattoos and/or body piercings as deviant.¹⁵

The Discussion Paper identifies that the proposed legislation may have ramifications for cultural communities and therefore requested feedback from various communities as to how the changes to legislation may impact cultural practices, rituals and rites of passage. As noted above, the Attorney-General indicated that consultations with

¹⁰ The exemption given for medical reasons is worded differently for body piercing than for tattooing or like procedures. Section 42(2) of the Act is narrower than the equivalent exemption proposed for body piercing (in clause 4 of the Bill) which does not apply restrictions to body piercings performed in good faith and in the course of a regulated health service provided by a registered health practitioner under the *Health Professions Registrations Act 2005*. The offence of tattooing a minor does not apply to any tattooing or like process performed 'by or at the written request of a medical practitioner under the *Health Professions Registrations Act 2005*'.

¹¹ See J. Campbell (1991) *The Masks of God: Primitive Mythology*, New York, Arkana.

¹² Victoria Pitts, Professor of Sociology at the City University of New York, offers a sociological analysis of the symbolism of body modification for groups wanting to separate themselves from mainstream society; however she argues that body modification is not so unusual within a culture where identity is often expressed through appearance (including fashion consumption and cosmetic surgery). See V. Pitts (2003) *In the Flesh: The Cultural Politics of Body Modification*, New York, Palgrave Macmillan.

¹³ *ibid.*

¹⁴ Guynup (2004) *op.cit.*

¹⁵ K. Hewitt (1997) *Mutilating the Body: Identity in Blood and Ink*. Bowling Green, Bowling Green State University Popular Press.

multicultural groups suggested that any impact of the proposed legislation would be minimal.

Medical and Health Issues

Tattooing and body piercing carry significant health complications and risks of infections. The Australian Medical Association and Australian Dental Association, among other organisations, have been vocal about the complications that can arise from such procedures; however, this Bill does not address health-related aspects as this is not within the jurisdiction of the Summary Offences Act.

The Health (Infectious Diseases) Regulations 2001 addresses provisions related to businesses that conduct body piercings and tattooing with regards to cleanliness and sterilisation and the prevention of disease. In 2004, health regulations were introduced requiring body piercers to provide information on health risks to prospective customers. Furthermore, the Brumby Government indicated that it would address some of the health issues related to tattooing and body piercing in the Government's 2008 Statement of Intentions. The Statement of Intentions proposed to ensure registration of tattooists and continued monitoring and investigating such businesses' compliance with the forthcoming legislation.¹⁶

In May 2008 the Government introduced the Public Health and Wellbeing Bill 2008 ('the Public Health Bill') which intended to repeal the *Health Act 1958* and create a new Act which would consolidate and modernise legislation to ensure a focus on prevention. The Public Health Bill, which is currently before the Legislative Assembly, addresses, among many other matters, the registration of businesses involving tattooing and 'skin penetration' (such as body piercing) (see clause 68 and 69 of the Public Health and Wellbeing Bill 2008).

Table 2, taken from the DOJ Discussion Paper, illustrates the potential risks associated with various forms of piercings and body art.

Table 2: Health Issues Associated with Piercing and Body Art

Piercing Site	Potential Risks
Ear	• Infection
Nose	• Infection
Mouth	• Infection, airway obstruction due to swelling, interference with speaking and chewing, possible oral surgery to retrieve jewellery, mouth irritation or trauma to teeth and gums including fracture to the enamel and gingival recession, tongue nerve damage, increased salivary flow, permanent numbness and loss of taste
Eyebrow	• Damage to nerves responsible for eyelid movement
Skin surfaces – neck, forearms, wrist	• Rejection, infection
Navel	• Risk of severe infection if the umbilicus is pierced
Nipple	• Infection, possible effect on ability to breast feed
Genitals	• Infection

¹⁶ The Statement did not specifically mention body piercing businesses in its brief summarised statements of reform. This may be due to the fact that body piercing is usually conducted under the auspices of hair or beauty services.

Other forms of body art	Potential Risks
Scarification	<ul style="list-style-type: none"> • Infection • Rejection of foreign matter.
Branding	<ul style="list-style-type: none"> • Infection
Beading	<ul style="list-style-type: none"> • Infection • Rejection of the foreign matter

Source: DOJ (2008) op. cit., p. 6.

Intimate Body Piercing

The Bill prohibits intimate body piercing on a person aged under 18 years. Intimate body piercing refers to the piercing of a person's genitalia (including surgically constructed genitalia), anal region, perineum or nipples. As the Discussion Paper identifies, rape and sexual assault offences in the Crimes Act may apply to genital piercings in certain circumstances. In section 35(b) of the Crimes Act, sexual penetration includes 'the introduction (to any extent) by a person of an object or part of his or her body (other than the penis) into the vagina or anus of another person'.

Furthermore, the offences of indecent act with a child under the age of 16, and indecent act with a 16 or 17 year old child (s. 47 and s. 49 of the Crimes Act) may apply to some piercing procedures. This provides only a more generalised legislative framework in which intimate body piercing of children may constitute indecency. In section 47(2) of the Crimes Act, consent is not a defence to the indecent act offences unless the accused can satisfy to the Court that:

- At the time of the offence, he or she believed on reasonable grounds that the child was aged 16 years or older, or 18 years or older (as the case requires); or
- That he or she was married to the child; or
- In relation to section 47 only, that he or she was no more than 2 years older than the child.

The Discussion Paper states that there was one reported case in Victoria in 2007 involving a body piercing operator who was charged with indecent assault and sexual penetration of minors, in relation to alleged assaults prior to the piercings being performed.¹⁷

Self Regulation

Most tattoo and piercing studios practice self regulation when it comes to tattooing or piercing minors. The Professional Tattooing Association of Australia (PTAA) is a national association that acts as an industry benchmark to monitor, represent and assist its Members. In order to become a full member of PTAA, a tattoo artist must be currently working in a professional studio for a minimum of two years and then fulfil one additional probationary year. The PTAA was established in 1994 and works with the relevant health authorities to develop Codes of Practice. There is currently no equivalent national association to the PTAA for tattooing or other forms of body modification, although a group under the name of Australian Piercing Association (APA) has recently formed and is calling for members to establish a regulatory framework.

¹⁷ DOJ (2008) op. cit., p. 10.

Backyard Operators

One of the concerns related to legislating against tattooing and body piercing is that banning young people from partaking in such activities from presumably registered businesses may drive these activities underground. In 2002, it was reported that the Bracks Government was considering legislation banning young persons from getting body piercings without parental consent, however due to fears young people would pierce themselves, the legislation did not go ahead.¹⁸ It was also reported that a blanket ban on piercing minors was ruled out in early 2007 in favour of new body piercing education programs for industry practitioners.¹⁹

4. Opposition's Position

The Nationals

The Nationals Member for Shepparton Jeanette Powell raised the issue of underage body piercing in Parliament in November 2004 and urged the government to review the law regarding the body piercing of minors after a constituent had raised concerns regarding the ease with which her 15 year old son had been able to obtain a tongue piercing.²⁰ For many MPs, complaints from constituents have been formative in influencing the immediacy with which these issues have gained prominence.

On 17 July 2007, Mr. Damian Drum of the National Party introduced a Private Member's Bill in the Legislative Council to amend the Summary Offences Act to require people under 18 years of age to obtain parental consent before undertaking body piercing. The Summary Offences Amendment (Body Piercing) Bill 2007 that was introduced by Mr. Drum added a new Division 6 to the Summary Offences Act that deals with body piercing. The new section added the definition of child as 'a person under the age of 18 years' and required that a person 'must not perform body piercing on a child without the prior written consent of the child's parent or guardian, given personally by the parent or guardian to the person who is performing the body piercing. The penalty for an offence under the section is 20 penalty units. Mr. Drum's Bill, supported by the National Party, does not change the penalty units for tattooing a minor, nor does it explicitly prohibit the practices of scarification, beading or branding. It also does not distinguish between different forms of body piercing, such as intimate and non-intimate and apply age restrictions and penalty units accordingly.

The Private Member's Bill was criticised as having several flaws by the Attorney-General Rob Hulls.²¹ The Government moved that the debate on Mr. Drum's Bill be adjourned until 19 September 2007 as there were outstanding issues with the current proposals.²² The Nationals have criticised the time taken for the Brumby Government to introduce legislation.²³

¹⁸ Sunday Herald Sun (2007) 'Body piercing bans planned', *Sunday Herald Sun*, 14 January, p. 16.

¹⁹ J. Metlikovec (2007) 'Every young body sacred in Casey', *Herald Sun*, 9 January, p. 12.

²⁰ Victoria, Legislative Assembly (2004) *Debates*, 4 November, p. 1265.

²¹ D. Rood (2007) 'Body pierce laws to be tightened', *The Age*, 11 September, p. 3.

²² Victoria, Legislative Council (2007) *Debates*, 8 August, p. 2270.

²³ For example, see Victoria, Legislative Council (2008) *Debates*, 26 February, p. 274 (Hall) and Victoria, Legislative Assembly (2008) *Debates*, 27 February, p. 450 (Powell).

The Liberals

The Liberal party indicated that it would support Mr. Drum's Bill. Prior to the introduction of Mr. Drum's Bill, Liberal MP David Hodgett called for an immediate overhaul of body piercing laws in Victoria in the Legislative Assembly.²⁴

The Greens

Greens Legislative Council member Sue Pennicuik said, in an article written in *The Age* concerning the legislation proposed by Mr. Drum, that if the point of the proposed laws was the health of young people they should be warned of the dangers rather than being told what to do.²⁵

5. Other Jurisdictions

Commonwealth

Tattooing and body piercing are not nationally regulated; rather, the responsibility lies with each of the states and territories.

States and Territories

An interesting comparison can be made with Victoria's current legislation, the proposed legislation and related legislation across other states and territories. Most of the states and territories do not have legislation restricting the body piercing of young people, however there is a general trend towards implementing legislation in this area, particularly recently, with many states having recently made legislative changes, in the process of debating changes or conducting a review of existing practice. At the time of writing, five Australian state and territory parliaments, including Victoria, have Bills proposing amendments to the laws relevant to the tattooing and body piercing of young people.

With regards to the legislation already in place, some states and territories (Queensland and South Australia), like Victoria, situate the legislation restricting the tattooing of minors in summary offences Acts, while others (New South Wales, Australian Capital Territory (ACT) and Western Australia) designate the legislation in Acts specifically dealing with the protection of children and young people. Legislation relating to health issues associated with tattooing and body piercing are generally contained within the relevant health and infectious diseases regulations. As aforementioned, the appropriateness of containing Victoria's legislation related to tattooing minors within the Summary Offences Act was questioned by the SARC review of the Summary Offences Act in 2001.²⁶

Victoria and the ACT require the facility performing the tattooing or body piercing to be formally registered, however there is no accredited system of apprenticeships or technical courses. Similarly, penalty units range significantly between the states and territories, from some jurisdictions having no legislation to others fining offenders up to \$22,000.

²⁴ Victoria, Legislative Assembly (2007) *Debates*, 17 April, p. 892.

²⁵ D. Rood & A. Jackson (2007) 'Teens to need parents' consent under piercing bill', *The Age*, 13 August, p. 6.

²⁶ Scrutiny of Acts and Regulations Committee (2001) *Review of Redundant and Unclear Legislation: Inquiry Into the Summary Offences Act 1966*, Final Report, November.

South Australia

Section 21A of the South Australian *Summary Offences Act 1953* makes it an offence to tattoo a minor in non-medical circumstances. The maximum penalty is \$1,250 or 3 months imprisonment.

The South Australian Parliament held a Select Committee on the Tattooing and Body Piercing Industries in 2005, which conducted a comprehensive review of the issue, including evidence given from a wide range of consultations from health experts and concerned parents.²⁷ Based partially on the recommendations of this report, in June 2007 the Summary Offences (Piercing and Scarification) Amendment Bill 2007 was introduced into Parliament. The new laws (expected to be passed in 2008) would make it an offence (punishable by a fine of up to \$1,250) to pierce any part of the body of a person under 18 unless the young person's parent or guardian accompanies the young person or provides written consent to the piercing (clause 6).

Queensland

In Queensland it is an offence to perform a tattoo on a minor (s. 19 of the *Summary Offences Act 2005*). The maximum penalty is 40 penalty units (\$3,000) or 6 months imprisonment.²⁸

Queensland is the only state or territory to currently legislate against performing body piercings on minors, however its legislation, contained within the Summary Offences Act legislates only against particular body piercings. Section 18(1) of the Summary Offences Act prohibits a person from performing 'as part of a business transaction' a body piercing to (a) the external genitalia of a female who is a minor, (b) the penis or scrotal skin of a male who is a minor or (c) the nipples of a minor. The maximum penalty for this offence is 40 penalty units or 6 months imprisonment, however if the minor is intellectually impaired or the minor's decision-making capacity is impaired because of alcohol or drugs, the penalty is doubled to 80 penalty units (\$6,000) or 1 year imprisonment.

Western Australia

In Western Australia, it is a criminal offence to tattoo or brand a minor (s. 103 of the *Children and Community Services Act 2004*) unless written parental consent is given specifying the particular tattoo and the part of the body which is being tattooed. The penalty is \$12,000 and imprisonment for one year.

There is no legislation restricting the body piercing of minors, however in August 2007 the Children and Community Services Amendment (Body Piercing) Bill was introduced by a Private Member's Bill, which proposed to make it an offence to pierce any part of a child's body without written parental consent, unless the piercing is performed for a medical or therapeutic purpose. The Bill also proposes to make it an offence to perform intimate body piercings regardless of parental consent (Clause 4). The Bill specifically indicates that it is not a defence to the offence described above that a child or a parent of the child consented to the intimate body piercing. All offences described have a maximum penalty of \$12,000 and imprisonment for one year.

Dr Janet May Woollard MP, who gave the second reading speech in the Legislative Assembly, stated that the legislation was important to protect children from 'making a

²⁷ South Australian Parliament (2005) Report of the Select Committee on the Tattooing and Body Piercing Industries, 19 October, House of Assembly.

²⁸ A penalty unit in Queensland is currently \$75 (s. 5 of the *Penalties and Sentencing Act 1992*).

trendy lifestyle choice that could have dire consequences for them in the future'.²⁹ Following the second reading speech the Bill was referred to the Community Development and Justice Standing Committee. The Committee is expected to report back to the Legislative Assembly by 25 September 2008.

New South Wales

In New South Wales (NSW), it is a criminal offence to tattoo a person under the age of 18 years unless written consent has been obtained from a parent of the young person specifying the particular tattoo and the part of the body which is being tattooed (s. 230 of NSW's *Children and Young Persons (Care and Protection) Act 1998*). The maximum penalty for an offence of this nature is 200 penalty units (\$22,000).³⁰ This is vastly different from the Victorian legislation that is proposing to increase the penalty units of the same offence from 5 penalty units (\$550) to 60 penalty units (\$6,600).

There is no legislation that specifically addresses the body piercing of minors, however there is currently a Bill before the NSW Parliament that aims to put in place legislation regarding the body piercing of children and young persons. The objectives of the Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tattooing) Bill 2008 are:

- to prohibit the intimate body piercing of children under the age of 16 years;
- to require parental consent for non-intimate body piercings of children under the age of 16 years (consent to be given either in person by a parent accompanying the child or young person or in writing); and
- to extend the circumstances in which it is an offence to tattoo a child or young person under the age of 18 years to include procedures such as scarification, branding and beading.

The NSW's Bill extends the definition of tattooing to include other procedures of which the purpose is to make a permanent mark, such as scarification, branding and beading. It also ascribes 200 penalty units (currently \$22,000) as an offence for anyone who performs a body piercing on any part of the genitalia or nipples of a minor, in line with the current penalty in NSW for tattooing a minor. Body piercings of young persons in other areas (i.e. non-intimate) without the consent of a parent may incur a maximum penalty of 30 penalty units (currently \$3,300). These offences do not apply to body piercing for medical purposes.

The proposed legislation, outlined above, was influenced by a statutory review of the Children and Young Persons (Care and Protection) Act in 2006 by the NSW Government. Part of this review included canvassing the possibility of introducing laws requiring parental consent for certain "unusual" body piercings (such as nipples, the belly button or the tongue) for children under 16 years of age.³¹ In a submission in response to the Discussion Paper released of the review, the Director-General of NSW Health stated that legislation was needed considering that body piercing carries greater risks of adverse health effects and complications, such as those identified in Table 1.³²

²⁹ Western Australia, Legislative Assembly (2007) *Debates*, p. 4501.

³⁰ The *Crimes (Sentencing Procedure) Act 1999* (NSW) s. 17 sets 1 penalty unit as equivalent to \$110.

³¹ NSW Government, Department of Community Services (2006) *Statutory Child Protection in NSW: Issues and Options for Reform*, Sydney, NSW Government.

³² NSW Health (2006) *Comments of the Discussion Paper 'Statutory Child Protection in NSW: Issues and Options for Reform'*, Sydney, NSW Health, p. 4. Submissions can be viewed at the NSW Government Department of Community Services website at <www.community.nsw.gov.au>.

The Discussion Paper identified that the disparity in legislating against the tattooing of minors and not of performing a piercing on a minor may be due to the difference in perception of tattooing in comparison to body piercing, which has generally viewed tattooing as irreversible and body piercing as a readily reversible process.³³ However the paper recognised that the more extensive variety of places on the body in which piercings are occurring is raising additional health concerns, prompting a more immediate need to legislate. An example given in the paper is the growing prevalence of tongue piercings, which can result in complications such as speech impediments and thus have the potential to adversely affect a child's education and social outcomes.

The paper also identified cultural obstacles to legislating against body piercing of minors with regards to infringing on the traditional practices of various cultural groups.

Australian Capital Territory

Like NSW, a tattooist commits an offence in the Australian Capital Territory (ACT) if he or she tattoos a person under the age of 18 years without written consent from the parents specifying the particularities of the tattoo and the location being tattooed (s. 388 of *Children and Young People Act 1999*). The maximum penalty is 50 penalty units, which is currently \$500 if the person charged is an individual or \$25,000 if the person charged is a corporation.³⁴

There is no legislation that addresses the body piercing of young people, however, there is, at the time of writing, a Bill before the ACT Parliament to amend the Children and Young People Act. This Bill, introduced in December 2007, would make it an offence (50 penalty units) to pierce a part of a young person's body that is 'not in accordance with the written permission of a person with parental responsibility for the child or young person' (clause 5 of the Children and Young People Amendment Bill 2007). Subsection 2 of clause 5 notes that 'an offence against this section is a strict liability offence' and subsection 3 defines the word pierce as meaning to 'pierce the part [of the body] to insert a ring, bar or other thing through the part [of the body], and includes piercing the ear'.

Northern Territory

There is no law in the Northern Territory that restricts a young person's ability to get a tattoo. In practice, a tattooist may often refuse to perform a tattoo on young persons under the age of 18 or may request parental consent.

There is also no law that prevents a person under the age of 18 years from getting a body piercing, however many piercing studios practice self regulation and request parental consent before performing a piercing on a minor.

Tasmania

Like the Northern Territory, Tasmania does not have specific legislation related to the tattooing and body piercing of minors, however many tattooing and piercing industries often exercise self-regulation.

³³ NSW Government (2006) op. cit., p. 34.

³⁴ For current penalty units see s. 133 of *Legislation Act 2001*.

Summary of the Jurisdictions

To summarise the information above, Table 2 illustrates the differences among the legislation in different states.

Table 3: The Law on Tattooing in Australia

State/Territory	Age of consent (for tattooing)	Maximum Penalty	Relevant Act
Victoria	18	\$550 (the Bill proposes to increase the fine to \$6,600)	s. 42 of the <i>Summary Offences Act 1966</i>
NSW	18 or written parental consent	\$22,000	s. 230 of the <i>Children and Young Persons (Care and Protection) Act 1998</i>
Queensland	18	\$3,000 or 6 months imprisonment	s. 19 of the <i>Summary Offences Act 2005</i>
ACT	18 or written parental consent	\$500 (if the person charged is an individual)	s. 388 of the <i>Children and Young People Act 1999</i>
South Australia	18	\$1,250 or 3 months imprisonment	s. 21A of the <i>Summary Offences Act 1953</i>
Western Australia	18 or written parental consent	\$12,000 and imprisonment for one year	s. 103 of the <i>Children and Community Services Act 2004</i>
Northern Territory	No specific legislation	-	-
Tasmania	No specific legislation	-	-

6. Stakeholders

Various community associations, concerned parents and healthcare groups have been active in campaigning for legislation against tattooing and body piercing of minors. Alternatively, some academics and child experts have highlighted the need to respect the rights of young people, their right of self determination and right to make judgements about their bodies.³⁵

Medical Associations

A South Australian study found that doctors and piercing practitioners had treated more than 1,000 people for body piercing infections or injuries in 2006.³⁶ Out of 22 piercing studies that had responded to their survey, all had treated or advised a client in relation to an infection or injury arising from body piercing during the preceding 12 months. Many medical practitioners and their representative bodies, such as the Australian Medical Association and the Australian Dental Association have vocalised the complications and consequences of tattoos and piercings, however these have primarily addressed health and medical issues which is not the focus of this Bill. The

³⁵ C. Danaher (2007) 'Teens claim body rights', *Herald Sun*, 25 August, p. 11.

³⁶ Southern Primary Health (2006) *Healthy Body Art: Body Piercing Infection and Injury Research Report*, Noarlunga.

Public Health and Wellbeing Bill 2008 offers the opportunity to tighten registration requirements of tattooing and body piercing businesses.

Local Councils

In January 2007, the Casey City Council in Melbourne's outer east considered enforcing a municipal ban on underage body piercing in the absence of state legislation. The Casey council have been previously successful in imposing regional regulation in the area of youth health and safety, having effectively banned local stores from selling spray paint to persons under 16 years of age in 2002 even though youth health and anti-graffiti groups are still lobbying the government to introduce a state ban on under-age paint sales.³⁷

³⁷ Metlikovec (2007) op. cit.

Reference List

Further Information on Victoria's Legislation

- Department of Justice (2008) *Summary Offences Amendment (Tattooing and Body Piercing) Bill: Exposure Draft Discussion Paper*, Melbourne, Department of Justice.
- Scrutiny of Acts and Regulations Committee (2001) *Review of Redundant and Unclear Legislation: Inquiry Into the Summary Offences Act 1966*, Final Report, November.

Guidelines and Policies Offered by the States and Territories

- NSW Government, Department of Community Services (2007), 'Review of the Act', viewed 19 March 2008, <http://www.community.nsw.gov.au/DOCS/STANDARD/PC_101109.html>.
- NSW Government, Department of Community Services (2006) *Statutory Child Protection in NSW: Issues and Options for Reform*, Sydney, NSW Government.
- South Australian Parliament (2005) *Report of the Select Committee on the Tattooing and Body Piercing Industries*, House of Assembly, 19 October.

Relevant Statutes in Victoria Addressing the Activities of Young Persons

- *Casino Control Act 1991*
- *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*
- *Crimes Act 1958*
- *Firearms Act 1996*
- *Gambling Regulation Act 2003*
- *Liquor Control Reform Act 1998*
- *Marriage Act 1961*
- *Summary Offences Act 1966*
- *Tobacco Act 1987*

Relevant Statutes in the States and Territories

- *Children and Community Services Act 2004* (WA)
- *Children and Young Persons (Care and Protection) Act 1998* (NSW)
- *Children and Young People Act 1999* (ACT)
- *Summary Offences Act 2005* (QLD)
- *Summary Offences Act 1953* (SA)

Bills Before Parliament

- *Children and Community Services Amendment (Body Piercing) Bill 2007* (WA)
- *Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tattooing) Bill 2008* (NSW)
- *Children and Young People Amendment Bill 2007* (ACT)
- *Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008* (Vic)
- *Summary Offences (Piercing and Scarification) Amendment Bill 2007* (SA)

Newspaper Articles, Books and Reports

- Sunday Herald Sun (2007) 'Body piercing bans planned', *Sunday Herald Sun*, 14 January, p. 16.
- Campbell, J. (1991) *The Masks of God: Primitive Mythology*, New York, Arkana.
- Danaher, C. (2007) 'Teens claim body rights', *Herald Sun*, 25 August, p. 11.
- Guynup, S. (2004) 'Scarification: Ancient Body Art Leaving New Marks', *National Geographic News*, July 28.
- Hewitt, K. (1997) *Mutilating the Body: Identity in Blood and Ink*. Bowling Green, Bowling Green State University Popular Press.

- Makkai, T. & I. McAllister (2001) 'The Prevalence of Tattooing and Body Piercing Amongst the Australian Community,' *Communicable Diseases Intelligence*, vol. 25, iss. 2, pp. 67-72.
- Metlikovec, J. (2007) 'Every young body sacred in Casey', *Herald Sun*, 9 January, p. 12.
- Pitts, V. (2003) *In the Flesh: The Cultural Politics of Body Modification*, New York, Palgrave Macmillan.
- Rood, D. (2007) 'Body pierce laws to be tightened', *The Age*, 11 September, p. 3.
- Rood, D. & A. Jackson (2007) 'Teens to need parents' consent under piercing bill', *The Age*, 13 August, p. 6.
- Southern Primary Health (2006) *Healthy Body Art: Body Piercing Infection and Injury Research Report*, Noarlunga.

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