



## Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft

### Youthlaw's submission

#### INTRODUCTION

Youthlaw is Victoria's state-wide community legal centre for young people under the age of 25. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw is co-located with seven other youth services as part of Frontyard Youth Services at 19 King St, Melbourne. In the 2006/7 financial year, Frontyard Services assisted 1,832 young people and had 11,000 contacts with young people. Young people accessing Frontyard Services are mostly aged between 18 and 25 and are either homeless, experiencing significant family breakdown or deemed to be 'at risk'.

We welcome this opportunity to respond to the Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft. The Bill reflects the Government's commitment to protecting community health and welfare especially of the young.<sup>1</sup> In order to try to achieve this objective the Exposure Draft Bill would amend the Summary Offences Act 1966 (Summary Offences Act) by:

- making it an offence to perform a non-intimate body piercing on a person aged under 16 years without consent of a parent or guardian and the consent of the young person (where he or she has capacity to consent).
- making it an offence to perform an intimate body piercing on a person aged under 18 years.
- increasing the penalty for the offence of performing tattooing or a like process on a person under the age of 18 years from 5 penalty units to 60 penalty units
- defining "like process" to tattooing to include scarification, branding and beading

Youthlaw provides comment on only some elements of the Exposure draft in this submission. The key issues that this submission will comment on are:

- A. Young people's freedom of expression
- B. Consent and evolving capacity of young people.
- C. The practicality of young people acquiring consent
- D. Appropriateness of proposed measures to protect the health of young people
- E. Regulating the industry to better protect young people.
- F. Accessible health promotion information about piercing and tattooing for young people

This submission relies on three key informants:

1. a human rights based framework
2. results from the *Tattooing & Body Piercing - Have Your Say* surveys, and
3. proceedings of the *Forum on Body Piercing and Tattooing for Young People*

---

<sup>1</sup> Department of Justice, (2008). Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft Discussion Paper. p.3.

## 1. Human rights based framework.

The core international standards for children and young people are explicitly set out in the United Nations *Convention on the Rights of the Child* (“CROC”), which is the cornerstone of Youthlaw’s work. In addition, proposed Victorian legislation must be considered in light of the *Charter of Human Rights and Responsibilities*. Both CROC and the *Charter* provide a rights-based framework for assessing the exposure draft of this Bill. Of particular relevance to this Bill are the following human rights of children and young people:

- the freedom of expression (article 13 CROC, section 15 *Charter* )
- right not to be discriminated against (article 2 CROC , section 8 *Charter* )
- right of a child to have their best interests considered (article 3, section 17(2) *Charter*)
- right and duty of parents and guardians to direct and guide their children in a manner that is consistent with the *evolving capacity* of that child (article 5 CROC)
- right of a child to form and express their own view in accordance with their age and maturity (article 12 CROC )
- right of a child to receive and have access to information (article 13 CROC)

In assessing the scale of human rights protection it is important to examine the circumstances in which the scope of human rights may be limited by laws under section 7(2) of the *Charter*.<sup>2</sup>

## 2. Results from the *Tattooing & Body Piercing - Have Your Say* surveys

Twenty nine young people between the ages of 14 and 25 completed the *Tattooing & Body Piercing - Have Your Say* surveys. The survey was distributed in hard copy at Front yard Youth Services (19 respondents, including forum participants) and on-line via surveymonkey.com (10 respondents). The survey questions expanded on the questions posed in the Office of Youth on-line survey. (See Appendix A - survey questions attached).

## 3. Proceedings of the *Forum on Body Piercing and Tattooing for Young People*

On Thursday 28<sup>th</sup> February 2008 nine young people between the ages of 16 and 25 years participated in a forum on body piercing and tattooing that took place at Frontyard Youth Services. The forum was organised by YACVic and Youthlaw and aimed to give participants a voice in the processes which determine this legislation’s content. (Please also refer to YACVic’s submission for more detail about the forum.) Youthlaw has incorporated some of the responses from young people revealed in the forum into this submission under relevant key areas. All participants remain confidential.

---

<sup>2</sup> Victorian *Charter* specifically sets out the matters to be taken into account in deciding if a limitation is reasonable, namely:

- (a) *the nature of the right; and*
- (b) *the importance of the purpose of the limitation; and*
- (c) *the nature and extent of the limitation; and*
- (d) *the relationship between the limitation and its purpose; and*
- (e) *any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.”*

## A. Young people's freedom of expression

Some survey respondents questioned the proposed age restrictions stating that body piercings are a question of individual choice and expression, a right protected by the freedom of expression (article 13 CROC, section 15 *Charter*) and that the proposed laws are discriminatory and deny them their rights of identity and expression as young people.

Indeed research on body modification suggests that for some young people their body modifications are definitive of who they are, and gives them some control over their own lives and bodies.<sup>3</sup>

Any limitation to this freedom of expression must directly help achieve the purpose of protecting young people's health and welfare and be the least restrictive and proportionate way of doing so. This public policy was largely a product of representations made by a number of distressed parents of children who have undergone body piercing without parental consent to their local National Member of Parliament.<sup>4</sup> Although the possible health risks associated with these procedures are undisputed, no data has been presented demonstrating a recent increase in the number of serious infections of other health issues arising out of these procedures.<sup>5</sup> Another possibility is that this policy is driven by political popularity with the parent's distress reflecting the judgmental attitudes or prejudices held by many people in the community against a growing trend and increasing popularity of many different body piercings.

As one young person put it in their survey response:

*...I think it's ridiculous. Just because they have become more popular they want to make it harder for us, why now all of a sudden? The reason there's more people doing it, is because it's socially accepted, well more than it use to be.*

Additionally quite a few survey respondents felt earlobes should be exempted as this represents a long established and standard practice of young people getting their ears pierced at young ages.

## B. Consent and the evolving capacity of a young person

Rather than setting a fixed age below which young people are presumed not to have the capacity to give informed consent to body piercing procedures, Youthlaw supports individualised assessment of their capacity. In practice the fixed age approach risks denying the capacity of young people to consent to these procedures and in turn contradicts the "*competency test*" established in case law. *Gillick v West Norfolk AHA*<sup>6</sup> states that minors under 16 years are capable of giving informed consent when he or she "*achieves sufficient understanding and intelligence to enable him or her to*

<sup>3</sup> e.g. Should Freedom of Expression be a right? Shannon Larratt, BMEzine.com, <http://www.bmezine.com/news/pubring/20021121.html>

<sup>4</sup> Second Reading, 18 July 2007, VicHansard p. 2046

<sup>5</sup> This was supported by the survey results where only one respondent (out of 29) had experienced a serious infection, and two had experienced other health concerns as a result of the procedure being dental damage and swollen rejection.

<sup>6</sup> (1986) AC 112

*understand fully what is proposed*". In this instance a young person under 16 years assessed to have the capacity to make a decision about the health risks associated with non intimate body piercings, has the ability to make decisions in his or her own right to the exclusion of any other person. It then comes down to the accessibility of information about the procedures and the associated health risks available to inform young people's decisions. (see section E below).

*I think people under 16 are smart enough to choose, and should not be patronised*

Similarly a young person's "*best interests*" need to be determined on a case-by-case basis and it requires a rigorous effort to ensure that best interest, not simply adult's perceptions of what those are, are considered. Although adults, including parents, and legal guardians are concerned with or have a claim in decision-making related to children, the best interests principle requires the involvement of children and their perspectives to be taken into account. The weight of the child's view should be assessed according to the child's evolving capacity i.e. their age and whether the child has sufficient maturity, understanding and intelligence to understand fully what is proposed.<sup>7</sup>

### **C. Practicality of obtaining consent**

Youthlaw supports the idea that wherever possible parents should be involved in the welfare of their children and support them with their decision making processes. However this is not always viable or realistic. Forum participants raised the issue of some young people under 16 who genuinely cannot obtain parental consent i.e. they are living way from home, on the streets or estranged from their family. They pointed out that it is unfair to deprive these young people access to safe and hygienic procedures because of these circumstances. They asked whether it would be preferable to ensure that regardless of the issue of consent that a young person is well positioned to access safe and professional procedures.

### **D. Appropriateness of proposed measures to protect health of young people**

Based on anecdotal evidence the proposed law is not necessarily going to be an effective means to achieve its prevailing purpose of protecting the welfare and health of children and young people. On the contrary, the research we have done with young people suggests that in restricting young people's access to professional body piercing services, the law may inadvertently work against this purpose by encouraging young people to engage in un-safe piercing practices and increasing their exposure to potential health risks.

What we have heard from young people is that they believe other young people are even more likely to pursue a piercing via a "*dodgy*" practice or via a "*back yard job*" if they have to gain consent. No doubt this heightens the health risks of serious infections.

---

<sup>7</sup> See article 5 CROC

Some comments from young people included:

*I don't believe that the new laws will be very effective. There are still many ways around it. [obtaining consent]*

*If you attempt to tell someone that they cant get a piercing then they will do it themselves or go and get a backyard job which would cause more aftercare problems than that of a piercing that is done by a professional*

A clear majority of young people (18/29) who completed the surveys indicated if they could/did not get consent they would proceed with the piercing anyway. Two respondents said they would forge consent letters. Others indicated that if they could not find a piercing business to do it, they would do it themselves or get friends to assist them (7/17).

One respondent warned:

*Think before you go ahead with it - there is a lot that you don't know and a lot that could go wrong. Fair enough you probably have parents that are saying that they want there to be age restrictions, but they are going to be the ones that are sorry when their kid gets denied for a piercing (etc eyebrow), and then decide that they are going to do it themselves and then paralise half of their face because they hit a nerve. This is something a piercist knows, but if you are willing to let people do there own piercings then suffer the consequences because it will all blow back in your faces*

A majority of the young people surveyed agreed with the proposed prohibition of intimate body piercings (i.e. for nipples and genitalia) of young people under 18 years (21/29). They indicated many piercers are already self regulating in relation to this rule.

However the reality is that some young people will and do inevitably get piercings and/or tattoos under the legal age (whatever that is determined to be). For example although most respondents were supportive of the current law prohibiting under 18 year olds from receiving tattoos, they were all aware of operators prepared to give tattoos to under 18 year olds.

Although nearly half of the respondents indicated they wouldn't get an intimate piercing if it was prohibited (14/29), others indicated they would (10/29) and that if they couldn't find a professional piercer to do the procedure they would do it themselves or with their friends assistance (6/29).

Some comments from survey responses reflecting this included:

*Even when you can't get it done professionally you will do it anyway and there are more health problems likely to occur by doing it yourself.*

*... think about all the people that are going to get backyard or do it yourself piercings and all the problems that is goin to come from this before you go ahead a submit your stupid law*

In this way by requiring consent at certain ages and imposing age restrictions the proposed laws restricts some young people's access to competent piercers/operators. Youthlaw urges the government to reconsider the bill with this evidence in mind.

## **E. Regulation of the industry**

Youthlaw recommends a better way of promoting the health and wellbeing of young people is by more effective regulation of the body piercing industry. The overwhelming majority of young people surveyed had their piercings or tattoos performed by professional operators. Whether or not that body piercing or tattooing service has required proof of age, it is critical that young people are able to access safe piercing and tattooing procedures from these operators.

As one young person responded in a survey:

*"We don't just need age legislation - we need rules regarding the competency of the piercing companies."*

The Discussion Paper refers to the *Health Act 1958* and how it requires persons who conduct a tattooing or body piercing business to register with the local council any premises upon which that business is conducted.<sup>8</sup> Registered businesses must comply with *Health (Infectious Diseases) Regulations 2001*, which sets out health guidelines to assist those involved in the personal care and body art industry to comply with these regulations. The guidelines provide information on: (1) how infection can be associated with the procedures employed in the industry, and (2) precautions to protect clients and employees. The guidelines also provide information on general matters that may be useful to the industry in performing its practices, and on infection control in general. These guidelines should be used as a guide to best practice and as a reference tool for people associated with the industry.

The reality in practice is that young people have many stories of people associated with the industry not adhering to these guidelines.

Forum participants told of a host of unprofessional practices of operators, including:

- procedures being performed by inexperienced staff
- body-piercers using inappropriate jewellery
- tattooists working while drunk, smoking, and stoned, and
- operators giving negligent after-care advice

We refer to YACVic's submission and the interviews they conducted with a small number of piercing professionals. Although generally in favour of some age-based restrictions to piercings, they also saw that the industry needed more effective regulation in order to improve health outcomes for young people. One piercer responded that he believed there was a need for "more education for Environmental Health Officers" and

---

<sup>8</sup> See section 366C

that current inspection procedures were inadequate. He suggested that some Environmental Health Officers should be specifically trained as experts in inspecting premises doing body-art procedures.

Another piercer stated that they believed the current system of piercing premises needing to register, not body piercers themselves, was inadequate. He stated that this creates a situation where body piercers are not accountable and do not need to verify their knowledge of the health risks associated with body piercing. He stated that:

“It’s the premises that’s registered, not the piercer...the premises can’t reduce infections can they?”

He recommended that comprehensive training could be developed and provided:

“A training program, possibly at RMIT, that covers basic anatomy, hygiene control and infection procedures (should be introduced).”<sup>9</sup>

In this regard Youthlaw supports YACVic’s recommendation that the Government investigate the need for improved training and regulation for the body piercing and tattooing industries, to ensure safe and consistent practice.

### ***Fines and defences for operators***

Interestingly the proposal in the bill to increase the fine for people who tattoo, brand, scar or bead people under 18 from \$550 to \$6,600 received a mixed response in the survey. 12 / 29 either totally, or most agree. This may be based on the premise that fines should be for operators who perform procedure in an unhygienic, unprofessional manner. This was alluded into in the following comment:

*It's the responsible thing to do in order to cover themselves in case anything goes wrong. Making them more accountable for their work.*

10/29 of respondents totally or mostly disagree with this increase of the penalty. This may be on the basis that this fine is really about enforcing and age restriction, and not directed at ensuring operators perform procedure in an unhygienic, unprofessional manner.

One comment reflecting this:

*...very harsh penalty, shouldn't apply if the customer deceived them about their age*

### ***Proof of age***

Youthlaw recommends that the ‘acceptable proof of age’ approach be adopted if the proposed body piercing age restrictions provisions are enacted. This is on the basis that some young people don’t carry much in the way of identification, for example a homeless young person. So rather than Evidence of Age document Youthlaw prefers

<sup>9</sup> YACVic’s Response to the Summary Offences Amendment (Tattooing and Body piercing) Bill Exposure Draft, p.16

Acceptable proof of Age. This term is broader than evidence of age document, encompassing documentary evidence that might reasonably be accepted as proving the person is at least 16 or 18 years of age, as the case requires. This approach offer greater flexibility to many of our clients.

## **F. Accessible health promotion information for young people about piercing and tattooing**

There was significant agreement amongst forum participants that there is not sufficient or readily accessible information for young people available on the risks and subsequent care of body piercings and tattoos. Current health regulations provide that operators must provide written information about transmission of infectious diseases associated with procedure directly before client before procedure carried out.<sup>10</sup> However we have heard from young people themselves is that such health promotion material needs to be readily accessible to potential clients *before* they visit a clinic.

In this context the question was raised at the forum: what of the health and well being of 18 year olds and over? Open communication and applicable health education materials is also very important for this age group.

Youthlaw recommends that health professionals should be encouraged to openly discuss body art and modification with young people of all ages, convey a nonjudgmental attitude, and assist with informed decision-making information to either reduce risks or dissuade.

The participants also suggested that it is difficult to find out about the reputation and practices of an operator in adhering to health regulation. Some young people approach their parents, many young people do their own research on the internet, ask their friends, or maybe base their decisions on the cheapest operators. Others learn by trial and error, discovering there are good operators who have a practice of requiring parental consent, have hygienic sterilised procedures, and at times refuse to perform unusual and risk adverse procedures. And then there are “*dodgy*” operators...

Group members suggested government needed to send a stronger health promotion message to young people as it was felt the current communication strategies were not having sufficient reach and were not available in a coordinated way.

A possible slogan was flagged: “*Be safe, not stupid*”.

The underlying health promotion messages could include:

- Be wary of who you go to, do your research to make sure they are registered with your local council and have a “*quality practice*”
- Be aware of the consequences if you don’t conduct your piercing/tattoo proper after-care.
- Be aware of some of the health risks i.e. nerve damage and serious infections, and know where you can go for help

Youthlaw endorses YACVic’s recommendations that:

---

<sup>10</sup> *Body Piercing and Tattooing client health information prepared by Department of Human Services - July 2006*

1. the Government produce youth friendly accessible health information aimed at supporting young people who are considering a piercing or tattoo to access safe piercing or tattooing procedures.
2. this information assists young people to identify 'safe', 'high quality' piercing and tattooing services that comply with industry standards.<sup>11</sup>

## **Cultural Issues**

With respect to the body piercing provisions and definition of "like processes" in the Exposure Draft Bill, Youthlaw encourages the government to consider some exemptions based on cultural and traditional ground.

We refer you to and endorse the submission from Centre for Multicultural Issues in this regard.

If you have any queries please contact Tiffany Overall, Advocacy and Human Rights Officer on 9611 2422 or [tiffany@youthlaw.asn.au](mailto:tiffany@youthlaw.asn.au)

## **Appendix A**

---

<sup>11</sup> YACVic's Response to the Summary Offences Amendment (Tattooing and Body piercing) Bill Exposure Draft, p.14

## TATTOOING & BODY PIERCING - HAVE YOUR SAY

1. Your Age: .....
  2. Your gender: MALE / FEMALE (circle)
  3. Are you Aboriginal or Torres Strait Islander YES / NO (circle )
  4. Were you born overseas? YES / NO  
If yes, where .....
  5. Do you speak a language other than English at home? YES/ NO If yes, which language?
  6. Do you have any: (tick a box)
    - genital piercings or nipple rings
    - other piercings (ear, nose, bellybutton, tongue studs, etc)
    - tattoos, including branding, beading and scarification
  7. If you have had piercings did you get them done by: (tick a box)
    - a body piercing operator
    - yourself or by friend
    - other (please specify.....)

As a result of the piercing did you experience:

    - serious infections YES / NO (please circle)
    - other health concerns YES / NO. If YES please specify  
.....
  8. **What do you think about** it being illegal if you are under 16, to have a piercing done unless you have written consent from a parent or guardian?
    - Totally agree  Totally disagree
    - Mostly agree  Mostly disagree
    - Neither agree nor disagree
- Other comments:
- *Even when you can't get it done professionally you will do it anyway and there are more health problems likely to occur by doing it yourself.*
  - *I think at 16 you should have a parents consent especially with tattoos*
9. Did you talk to a parent/guardian or another adult before you got the piercing/ tattoo?  
YES / NO
  10. Would it be possible for you to ask a parent or guardian for consent to a non intimate piercing? YES / NO
  11. If you can't get parental or guardian consent is this because
    - They don't agree
    - You can't ask them (not living at home/ not speaking to them)
    - Other reason (please explain)

.....  
12. Would you get the piercing anyway? YES/ NO

13. How would you get it done?

- Do it yourself/with help of a friend YES / NO (please circle)
- Other way (please specify)

.....  
**14. What do you think about** it being illegal to have an intimate piercing (ie. genital piercing or nipple rings) if your under 18?  Totally agree  Totally disagree  
 Mostly agree  Mostly disagree  
 Neither agree nor disagree

Other comments: .....

15 Do you know of young people who have done intimate body piercings themselves or with friends? YES/NO

16. If the law makes it illegal for anyone under 18 years would you get it done anyway? YES /NO

17. How would you get it done?

- Do it yourself/with help of a friend Yes/No
- Other (please explain) .....

**18. What do you think about** including “branding, beading and scarification” in the definition of tattooing i.e. illegal under 18 years?

- Totally agree  Totally disagree
- Mostly agree  Mostly disagree
- Neither agree nor disagree

Other comments: .....

**19. What do you think about** the proposal to increase the fine for people who tattoo, brand, scar or bead people under 18 from \$550 to \$6,600?

- Totally agree  Totally disagree
- Mostly agree  Mostly disagree
- Neither agree nor disagree

Other comment: .....