


YACVic's Response to the Summary Offences Amendment  
(Tattooing and Body Piercing) Bill Exposure Draft

**youth**affairs  
COUNCIL OF VICTORIA INC.



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# Introduction

## Youth Affairs Council of Victoria

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The Youth Affairs Council of Victoria (YACVic) is the peak body representing the youth sector in Victoria. YACVic provides a means through which the youth sector and young people voice their opinions and concerns in regards to policy issues affecting them. YACVic works with and makes representations to government and serves as an advocate for the interests of young people, workers with young people and organisations that provide direct services to young people. YACVic also promotes and supports the participation of young people in debate and policy development areas that most affect them. YACVic's resources are primarily directed towards policy analysis and development, research and consultation and to meeting the information, networking, education and training needs of our constituency.

## The proposed changes to the law in relation to tattooing and body piercing

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In January 2008 the Department of Justice released the Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft Discussion Paper. The document outlines the rationale for changes to the law proposed in the Exposure draft and a copy of the Draft Bill.

The Discussion Paper explains that the 'proposed reforms, contained in the Summary Offences Amendment (Tattooing and Body Piercing) Exposure Draft Bill, reflect the Government's commitment to protecting community health and welfare especially of the young.'<sup>1</sup> In order to achieve this objective the Exposure Draft Bill would amend the Summary Offences Act 1966 (Summary Offences Act) by:

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

- 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
- 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.

YACVic provides comment on only some elements of the Exposure draft in this submission.

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### The ‘Piercing Issues’ forum on body piercing and tattooing for young people

In working to ensure that young people meaningfully participate in policy debates that concern them, YACVic and Youthlaw (Victoria’s state-wide community legal centre for young people) partnered to host a consultation forum for young people to discuss the proposals put forward in the Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft.

The ‘*Piercing Issues*’ forum on body piercing and tattooing for young people’ was held on the evening of the 28<sup>th</sup> of February at Frontyard Youth Services in the Melbourne CBD. A flyer advertising the forum was distributed through youth service networks and displayed in piercing studios and other retail outlets, inviting young people to participate and have their say.

Nine young people participated in the consultation, their ages ranging between 16 and 25 years. All but two of the young people participating had experienced getting a body

piercing or a tattoo, with many of the young people having done so on several occasions. The identities of the young people who participated were not disclosed or recorded.

The consultation was audio recorded with the permission of the young people who participated and was observed by Department of Justice representative, Anthony Lawrie and YACVic and Youthlaw staff.

The consultation was independently facilitated by a contracted facilitator with a high level of experience in working with young people. Once the young people were briefed on the proposed changes put forward in the Exposure Draft, the facilitator guided the young people through a discussion that sought to capture their perspectives on the following key areas:

- Age of consent: This discussion canvassed young people's perspectives on the introduction of an age of consent requirement to access a non-intimate piercing. It explored:
  - the merits of this proposal;
  - their insights into what the responses of young people might be should they not be granted consent (such as potentially seeking a piercing regardless and how this might be achieved);
  - the capacity of young people to produce adequate proof of age identification.
- The process of deciding to get a piercing or a tattoo: This discussion explored the factors that influenced young people's decision making when it came to getting a tattoo or piercing. Young people were asked:
  - whether they had discussed their idea to get a piercing or a tattoo with a parent, guardian or other adult before having the procedure and what the impact of these conversations were.
  - Would they seek out other information and if so where/how?

- How long had they taken to make the decision to get a piercing or a tattoo?
- How readily would they seek medical advice if they had a complication resulting from the piercing or tattoo and whether their readiness to seek that advice would be influenced by the legal status of the procedure?
- How they perceived the various procedures outlined in the exposure draft (tattooing, general piercing, intimate piercing, branding, beading and scarification).
- Their personal stories and thoughts: Here young people were asked to consider their own personal experiences, particularly in relation to:
  - Their access to a procedure; how professional/safe were the places they had accessed? How easy was it to get a piercing or tattoo? Were they ever refused one?
  - Whether they saw the procedure (particularly piercing) as a permanent fixture or a temporary accessory.
  - Any other thoughts or personal reflections that they had.

YACVic has incorporated some of the responses from young people revealed in the forum into this submission under relevant key areas.

## About this submission

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This submission will reflect both the policy perspective of the Youth Affairs Council of Victoria on the Exposure Draft and the perspectives of young people consulted by YACVic and Youthlaw in the 'Piercing Issues' forum. It will also reflect the opinions of a small number of professional body piercers that YACVic was able to interview in researching for this submission.

YACVic's primary areas of interest in this Bill are the proposals to restrict young people's access to piercing and associated issues, particularly the requirement for young people to gain consent and the potential health outcomes of restricting young people's access to

professional piercing services. This submission does not focus on those elements of the bill concerned with increasing the penalty for tattooing young people or on defining 'like processes' to include scarification, branding and beading.'

Key issues that this submission will comment on are:

- Young people's capacity to consent.
- The potential negative health impacts of restricting young people's access to professional piercing and tattooing services.
- The importance of providing accessible health information to young people about piercing and tattooing.
- The importance of regulating the industry rather than restricting young people's choices.

YACVic's discussion of all of these topic areas will incorporate information provided by young people through the 'Piercing Issues' forum and from piercers interviewed by YACVic staff.

## Young people's capacity to consent

The Discussion Paper acknowledges 'the leading Australian authority on consent of minors in relation to medical procedures is *Secretary, Department of Health And Community Services v JWB and S.M.B (Marion's Case)*.<sup>2</sup> In this High Court decision, the majority decision reflected the House of Lords decision in *Gillick v West Norfolk AHA* (1986) AC 112 and the majority stated that (at 233):

'A minor is...capable of giving informed consent when he or she "achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed."

This approach, though lacking the certainty of

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<sup>2</sup> Department of Justice, (2008). Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft Discussion Paper. p.9.

a fixed age rule, accords with experience and with psychology. It should be followed in this country as part of the common law.’

The Discussion Paper, in its commentary on the finding, places focus on the ‘incapacity’ of some young people to consent when it states:

‘..it is arguable that a young person who does not have the intellectual capacity and emotional maturity to understand the nature and consequences of a particular body piercing will be unable to provide a valid consent to such procedure, and the procedure would constitute an assault.’<sup>3</sup>

YACVic suggests that the focus here should be on the ‘capacity’ of a young person to consent where, as McHugh J stated (at 311) in the *Marion Case* ruling, they have ‘sufficient intellectual capacity and emotional maturity required to understand the nature and consequence of the procedure to be performed.’ YACVic also suggests that a key element of this ruling which is of particular relevance in considering the proposals in this draft bill is the preference placed on opting for a ‘capacity’ based approach rather than a ‘fixed age rule.’

The introduction of a law that prohibits any person under the age of 18 years from getting an ‘intimate’ piercing and prohibits any person under the age of 16 from getting a non-intimate piercing without parental consent and proof of age, takes a ‘fixed age’ approach which risks denying the capacity of young people to consent to these procedures.

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<sup>3</sup> Department of Justice, (2008). Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft Discussion Paper. p.9.

YACVic would also like to highlight that the ‘Gillick decision’, drawn from in the determination of the Marion Case, contained a commonly referenced ‘test’ for ‘Gillick competency’ as defined by Lord Scarman:

‘As a matter of Law the parental right to determine whether or not their minor child below the age of sixteen will have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed.’<sup>4</sup>

The proposal put forth in the Exposure Draft to require parental consent for young people under the age of 16 to receive a ‘non-intimate’ body piercing denies the Gillick competency test that in part underpinned the ‘leading Australian authority on consent of minors in relation to medical procedures’.<sup>5</sup>

As one young person stated at the ‘*Piercing Issues*’ forum, drawing from their own experience of having a piercing:

“It comes down to common sense, it is vital you look after it. Are you competent enough to look after it and do you know the consequences? It is about the individual being competent.”

Various provisions exist in other Australian States and nationally that allow young people to consent without needing competency assessed and the age at which they allow for this varies. As Professor Susan Sawyer, Director of the Centre for Adolescent Health, and her co-authors on the article ‘*Confidential health care for adolescents; reconciling clinical evidence with family values,*’ highlights:

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<sup>4</sup> Lord Scarman, *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 A11 ER 402 (HL).

<sup>5</sup> Department of Justice, (2008). Summary Offences Amendment (Tattooing and Body Piercing) Bill Exposure Draft Discussion Paper. p.9.

‘There are statutory provisions for a person aged 14 years and above in NSW (section 49(2) of the *Minors (Property and Contracts) Act 1970*), and aged 16 years and above in SA (section 6(1) of the *Consent to Medical and Dental Procedures Act 1985*), to consent to their own treatment without undergoing a mature minor assessment. Children over 15 years of age can obtain their own Medicare card, and in any Australian state a doctor may “bulk bill” a consultation with an adolescent using the family Medicare card without advising the parents.’<sup>6</sup>

These examples beg the question as to whether by comparison it is reasonable to deny a young person under 16 the opportunity to consent to the procedure to get a ‘non-intimate’ body piercing.

Young people who participated in the ‘*Piercing Issues*’ forum articulated mixed responses to provisions in the bill relating to consent. Some questioned the right of a parent to consent to a child or young person having a piercing, without necessarily the child’s consent such as in examples where young children and infants have a piercing. They stressed the importance of young people’s own consent as a pre-requisite to a procedure being done.

Some young people questioned whether it was fair for young people to be able to access a procedure only if their parents consent and saw potential double standards in legislation that legitimate some young people’s access to a procedure and not others. As one young person described:

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<sup>6</sup> Sancu, L., Sawyer, S, Kang, M., Haller, D and Patton, G.(2005), ‘Confidential health care for adolescents: reconciling clinical evidence with family values.’ *Medical Journal of Australia*, 183 (8): 410-414. p.2.

“..then the parents are deciding what is right or wrong, then if you are in a peer group, being 15 or 17 (depending on the piercing) then you are going to have some who are allowed legally to have those piercings and some that aren't. I can see that being an issue.”

Others were supportive of the proposal to prohibit 'intimate' body piercing for young people under 18 years particularly in the case of genital piercings, however they did not necessarily consider a nipple piercing to be 'intimate' and had mixed responses as to whether that should be included in the definition.

**YACVic recommends** that the Exposure Draft be amended to recognise young people's capacity to consent to procedures and therefore remove the provisions 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). YACVic recognises the need for the legislation to reflect community standards and thereby accepts the need for a provision restricting young people's access to an 'intimate' piercing procedure with the introduction of an aged-based restriction. YACVic recommends however, that the definition of 'intimate' body piercing only include genital piercings.

## **The potential negative health impacts of restricting young people's access to professional piercing and tattooing services**

YACVic acknowledges that the proposals in the Exposure Draft reflect 'a commitment to protecting community health and welfare, especially of the young.' However, YACVic is concerned that in restricting young people's access to professional body piercing services, this legislation may encourage young people to engage in un-safe piercing practices, thereby exposing young people to health risks. Anecdotal evidence provided to YACVic by

young people and health services, suggests that young people already willingly 'self-pierce' or ask a friend or associate to do a piercing for them. This practice is less commonly reported in relation to tattooing, however is reported to occur.

This was confirmed by feedback received from young people at the '*Piercing Issues*' forum. As one young person told us when responding to the question:

'You would go to some weirdo in a back alley. I know some people who have done that. I used to go to high school with a guy who wanted his eyebrow done, his parents wouldn't let him, he was 15, so he got his cousins friend to do it. It got really, really infected and he had to take it out. His whole eyebrow has never been the same. If he had gotten it done professionally, he probably would still have it and wouldn't have that problem. I think it kind of limits access to competence.'

Another young person said:

'Some of my friends who's parents would not give consent, they would be using safety pins or pushing studs through as hard as they can.'

Another young person predicted:

'If they can't do it via a legitimate business, but they really want it, they will find somewhere.'

The Discussion Paper outlines the potential health risks related to piercing and tattooing. These are many and varied, ranging from 'infection' or 'rejection' to the transmission of

serious blood-borne viruses such as hepatitis B and C and HIV. YACVic accepts that the legislation may result in a drop in the numbers of young people who experience a common adverse health impact (such as infection) due to the restricted access to the procedure. However, YACVic asserts that, given the evidence that young people will engage in unsafe piercing practices, the numbers of young people experiencing the very serious potential health impacts (such as exposure to blood-borne viruses) could increase.

**YACVic urges the Government** to consider the merits of introducing legislation that may reduce the incidence of common conditions such as infection resulting from piercing but may at the same time raise the risk of young people's access to hepatitis B and C and HIV.

## **The importance of providing accessible health information to young people about piercing and tattooing.**

Young people who participated in the '*Piercing Issues*' forum were asked to reflect on the process through which they came to a decision to get a piercing or a tattoo – who they talked to, whether they sought out information and where they looked for that information. Young people presented various responses to these questions with some reporting having made a 'spur of the moment decision', but the majority reporting that they did seek out information about piercing or a tattoo before deciding to go ahead with the procedure.

The key methods through which young people sought that information were through discussions with friends and via the Internet. Young people stated that they wanted to know more about which piercing or tattoo services were 'reputable' and 'safe' and wanted accessible health and after-care information aimed at young people that promoted safe behaviour. One young person suggested that a brochure or poster

might have key questions to help guide a young person through the decision to safely get a piercing or tattoo:

“I would love to see a poster or something saying ‘here are some questions you should ask or here are some things you should look out for’.”

The vital importance of this sort of information being available to young people was evidenced by the experiences young people described in accessing a piercing. One young person described the risk she took without access to information about the quality of a piercing service:

“I found the good and the bad places (to get a piercing done) by trying them out.”

Young people would benefit from a system or scheme through which they can access information about the ‘quality’ of a piercing service, for example, certification of it’s compliance with industry standards can be clearly displayed or made available.

**YACVic recommends** that 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. YACVic also recommends that this information assist young people to identify ‘safe’, ‘high quality’ piercing and tattooing services that comply with industry standards.

## **Regulation of the industry rather than restricting young people’s choices**

In order to promote the health and wellbeing of young people, YACVic sees more benefit in close and effective regulation of the body piercing industry than in restricting young

people's access to these services. As has been mentioned earlier in this submission, YACVic does not oppose age based restrictions to young people getting a tattoo however, anecdotal evidence suggests that young people are not always required to provide proof of age in getting a tattoo. Ensuring that young people are able to access a safe piercing procedure is a fundamental element of harm minimisation.

Testimony from both young people and a small sample of piercing professionals clearly describes an industry that needs much more stringent regulation. Feedback suggests that the quality of service varies dramatically, with poor procedures being commonly administered. Young people report being able to access some piercing studios and tattooists easily without proof of age and others report being denied a service on the basis of their young age, showing inconsistency in approach in the industry. It also suggests that training is inadequate for piercers and that many piercers do not have a strong understanding of how to appropriately ensure hygiene control and infection procedures.

At '*Piercing Issues*' young people described experiences of being exposed to poor piercing practices:

“A lot of them (piercings) were done incorrectly and I had to deal with the consequences. Three of them were done incorrectly and I had to get them taken out and then Mum consented to me getting one redone at a reputable place.”

“The professional ones I got done were really, really good, but the first piercing I had which was my eyebrow was infected and done by a trainee. So, um, so be wary of where to get them done.”

Other young people described their easy access to a Tattooist:

“I have never been asked for ID and my first tattoo I got a week after my 18<sup>th</sup> Birthday and they didn’t ask.”

“None of my tattoos, have I been asked for ID, which I find weird. They base it on the fact that I have other tattoos.”

YACVic was able to speak with a small number of piercing professionals, who expressed that they were in favour of age –based restrictions to piercings, but 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 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).”

**YACVic recommends** that the Government investigate the need for improved training and regulation for the body piercing and tattooing industries, to ensure safe and consistent practice.

## Summary of key recommendations

**YACVic recommends** that the Exposure Draft be amended to recognise young people's capacity to consent to procedures and therefore remove the provisions 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). YACVic recognises the need for the legislation to reflect community standards and thereby accepts the need for a provision restricting young people's access to an 'intimate' piercing procedure with the introduction of an aged-based restriction. YACVic recommends however, that the definition of 'intimate' body piercing only include genital piercings.

**YACVic urges the Government** to consider the merits of introducing legislation that aims to reduce the incidence of common conditions such as infection resulting from piercing but may have unintended consequences raising the risk of young people contracting hepatitis B and C and HIV, through unsafe piercing practices.

**YACVic recommends** that 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. YACVic also recommends that this information assist young people identify 'safe', 'high quality' piercing and tattooing services that comply with industry standards.

**YACVic recommends** that the Government investigate the need for improved training and regulation for the body piercing and tattooing industries, to ensure safe and consistent practice.