



Regulation of Infection Control in the Body Art Industry in Australia and New Zealand

A Summary

**National Public Health Partnership
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INTRODUCTION

This Report provides an overview of the legislation, guidelines and codes regarding infection control practices and Occupational Health and Safety provisions for practitioners within the Body Art industry in Australia.

Body Art is a commonly used term for tattoos, body piercing and branding¹. However, in broad terms it could include a number of areas, which do not strictly fall in these categories but can be characterised as Body Art, such as children's tattoos, henna application and jewellery. This Report is limited to providing an overview of the legislation relating to Body Art as an invasive procedure involving skin puncture which clearly increases the risk of infection and which is becoming increasingly popular². The legislation referred to in the Report does not for the most part cover children's tattoos, henna application and jewellery.

All the States and Territories in Australia regulate invasive Body Art procedures in some form to minimise the risk of blood borne infections. The legislation in the most part is not intended to cover skin reactions resulting from irritation/allergy/trauma following non-invasive procedures to the skin.

This Report is a short mapping exercise of provisions regulating this industry in Australia and has been undertaken by the Legislation Reform Working Group (LRWG), a subcommittee of the National Public Health Partnership (NPHP) Group. The LRWG undertakes activities aimed at modernising public health legislation, encouraging best practice to facilitate regulation review and reform activities, and pursuing national consistency of public health legislative approaches, where appropriate. All jurisdictions are represented on the LRWG.

This Report has been compiled in response to a proposal by the Inter-Governmental Committee on AIDS, Hepatitis C and Related Diseases (IGCAHRD) for the development of nationally consistent legislation and guidelines regarding appropriate infection control practices and occupational health and safety of practitioners within the Body Art industry.

The aims of the Report are:

- to provide a snapshot of legislation, guidelines and codes currently existing in Australia governing infection control within the Body Art industry; and
- to inform the work of IGCAHRD in this area.

The information for this Report was provided by LRWG members for their respective jurisdictions and collated by the Commonwealth as the lead agency. The Commonwealth also undertook some background research to inform the report.

The Report consists of brief chapters providing information on each jurisdiction. A short conclusion is provided at the end of the Report. It should be noted that there is no law in relation to Body Art industry at the Commonwealth level.

¹ Edith Cowan University, Health and Medical Service Publication. The brochure seeks to provide students with information on Body Art and discusses health issues relevant to these procedures. Website - <http://www.ecu.edu.au/ssc/HMS/publications.html>

² Prevalence of tattooing and body piercing in the Australian community; Toni Makkai and Ian McAllister; <http://www.health.gov.au/hfs/pubhlth/cdi/cdi2502/cdi2502i.htm>

AUSTRALIAN CAPITAL TERRITORY

In the ACT the following legislation relates to the Body Art Industry:

- Part III of the *ACT Public Health Act 1997*;
- the *ACT Code of Practice on Infection Control (for Office Practices and other Community Based Facilities) 2002* (the Code); and
- Section 388 of the *ACT Children and Young People Act 1999*.

Any business, charity, demonstration or service that carries out a *skin penetration procedure* or an *infection risk procedure* is regulated under Part III of the *ACT Public Health Act 1997* and must comply with the standards set in an applicable Code of Practice. A *skin penetration procedure* is any process that involves the piercing, cutting, puncturing or tearing of a living human body. An *infection risk procedure* is any process that involves the administration of make up or other like substances on human skin or mucus membrane, or any process that involves the insertion of instruments, equipment, foreign objects, substances or other matter inside a human body for cosmetic or therapeutic purposes.

Skin penetration procedures have been declared licensable public health risk activities under the *Public Health Act 1997* and businesses that carry out skin penetration procedures, such as tattooing and body piercing are required to hold a Public Health Risk Activity (Infection Control) Business Licence. Businesses whose skin penetration activities are limited to *infection risk procedures* or closed ear piercing on the lower lobe of the ear are not required to hold a licence.

The *ACT Code of Practice on Infection Control (for Office Practices and other Community Based Facilities) 2002* has been developed and is expected to be introduced in early 2002. The Code will be an enforceable Code of Practice under the *ACT Public Health Act 1997*. It is the objective of the Code to provide businesses with a set of infection control standards and guidelines that are clear and easy to follow and which allow uniformity of infection control practice. The Code will be supported by Infection Control Guidelines, which have been developed to assist businesses in meeting the Code's requirements. The Guidelines have been written in a clear and easy to read style, so that it can be readily followed and understood by all infection control business operators, such as those performing body art.

The Code and Guidelines cover many infection control practices including:

- provision of written "after care" advice;
- use of single use and reusable equipment;
- premises construction;
- handling and disposal of sharps and clinical wastes;
- personal protective equipment and immunisation;
- aseptic technique and skin disinfectants;
- environmental cleaning including dealing with blood and body substance spills; and
- reprocessing of appliances.

Section 388 *ACT Children and Young People Act 1999* requires the written consent of a parent prior to tattooing of a child or young person.

S 388 Tattooing of children and young people

A person must not in any manner tattoo a part of the body of a child or young person unless the person has first obtained the written permission of a parent of the child or young person to tattoo the child or young person in that manner on that part of the child's or young person's body.

Maximum penalty: 50 penalty units.

USEFUL WEBSITES

The Infection Control Code of Practice is available at:
<http://www.health.act.gov.au/publications/index.html#>

ACT legislation is available at:
<http://www.legislation.act.gov.au/>

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NEW SOUTH WALES

In New South Wales, the following legislation relates to Infection Control in the Body Art Industry:

- Section 51 of the *Public Health Act 1991*;
- Public Health (Skin Penetration) Regulation 2000; and
- Section 28 of the *Children (Care and Protection) Act 1998*.

A skin penetration procedure is defined to mean acupuncture, tattooing, ear piercing, hair removal, any other procedure (whether medical or not) that involves skin penetration, and any other procedure prescribed by the regulations (colonic lavage is prescribed as a skin penetration procedure).

Procedures carried out in the practice of a registered medical practitioner, dentist, chiropractor, osteopath, dental technician, nurse, optical dispenser, optometrist, and a psychologist are exempt. Similarly, procedures carried out by a person acting under the direction or supervision of such a professional as part of that professional's practice is exempt. (These professions are covered by separate infection control guidelines).

The Regulation provides for basic standards in relation to premises where skin penetration procedures are conducted and the articles and equipment (including protective equipment) used in such procedures.

A person carrying out skin penetration must notify the local authority of the address of the premises. This requirement also extends to mobile operators. Local authorities are required to maintain a register of premises in their area at which skin penetration procedures are carried out.

The Regulation provides for the making of Guidelines on Skin Penetration and blood cholesterol testing or blood screening and anything done in compliance with those guidelines is a defence for a prosecution for an offence. The Guidelines set out basic infection control requirements consistent with the Regulation. Whilst not a statutory requirement, the public health unit has also developed a Code of Best Practice which sets out recommended (more extensive) standards with respect to matters such as disinfection, waste disposal, sterilisation and cleaning.

The *Children (Care and Protection) Act 1998* provides that it is an offence to tattoo a person under the age of 18 years without first obtaining the written consent of a parent of the child to tattoo the child in that manner and on that part of the child's body.

USEFUL WEBSITES

www.health.nsw.gov.au/public-health/ehb/publications

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NEW ZEALAND

There is no dedicated legislation specifically related to the Body Art industry in New Zealand.

Tattooing and body piercing is currently not subject to any specific legislative controls in New Zealand. These practices are subject to generic consumer safety legislation (administered by the Ministry of Consumer Affairs) and the *Health and Safety in Employment Act 1992* (for the body artists themselves). The nuisance provisions of the *Health Act 1956* (any conditions which are "offensive or likely to be injurious to health") could apply, and these are enforced by local government.

Additionally, any one of 74 city or district councils could also make local by-laws that might also apply.

In order to protect public health safety in relation to tattooing and body piercing, the Ministry of Health in 1998 produced Guidelines for the Safe Piercing of Skin. The guidelines explain:

- how to minimise risk of transmitting blood borne and other infections by the use of standard precautions during skin piercing procedures;
- how to ensure appliances are clean and sterile before being used for skin piercing;
- how to minimise the risk of transmitting micro-organisms between the operator, the appliances used and other clients; and
- how to further promote a safe work environment for workers performing skin piercing operations.

Operators who offer body piercing and tattooing services to promote minimum standards with respect to infection control in this industry use these guidelines. Although there is expectation that operators will use the guidelines, there is no legislative requirement for this to occur.

The *Health Act* is currently the subject of a major review process (expected to be replaced by a new *Public Health Act* in a couple of years), and it is possible that in future regulations could be developed in relation to tattooing and body piercing. However, at this time there are no specific plans to develop any such regulations.

USEFUL WEBSITES

<http://www.moh.govt.nz>

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NORTHERN TERRITORY

The Northern Territory has no legislation specific to infection control in the Body Art industry.

However, it has Standards for Commercial Skin Penetration, Hairdressing and Beauty and Natural Therapy. If an operator were in breach of those Standards, environmental health officers would be able to use the provisions of the Public Health (General Sanitation etc) Regulations under the *Public Health Act* to prevent a risk to health.

The *Public Health Act* is under review. The proposal in relation to public health risk activities is that the Minister will prescribe certain high-risk activities by notice in the Gazette. It is expected that body piercing will be a prescribed activity. Any activities so prescribed will have to be registered and persons carrying out the activity will have to adhere to any Code of Practice or conditions attached to the registration. Failure to do so will be an offence and could also result in cancellation of the licence.

USEFUL WEBSITES

www.nt.gov.au/lant/hansard

then scroll to current legislation

click to view alphabetically, then go to *Public Health Act* and Regulations

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QUEENSLAND

In Queensland, the following legislation relates to Infection Control in the Body Art Industry:

- Health Regulation 1996 – Part 15 – Skin Penetration.

The legislation sets out infection control requirements for skin penetration operators such as tattooists and body piercers. It applies to acupuncture and electrolysis and any other process where the skin is penetrated. There are exemptions for practitioners such as medical practitioners, dentists. There is no guideline, which compliments this legislation.

Under the current legislation, local governments throughout Queensland enforce the Part 15 and can charge an annual \$200 premise registration fee to cover costs of enforcement and administration. It is a requirement that business operators register their premises with the local government.

The legislation is currently under review under the National Competition Policy requirements. A consultant was engaged to prepare a Risk Report and Public Benefit Test report. These documents formed the basis of a regulatory model for the hairdressing, beauty therapy, tattooing and body piercing industries in relation to infection control. New legislation with a complimentary guideline covering these practices is currently under development. A Regulatory Impact Statement is required but has not been prepared to date. It is expected that the new legislation will be in place in July 2002.

Of particular note is that the Risk Report identified through a risk profile (higher risk, moderate risk, lower risk) that higher risk operators such as tattooists and body piercers should successfully complete a basic training course in infection control and this requirement is included in draft legislation. It will be a breach of legislation if these operators are found practising without a statement stating they have successfully completed such a training course.

The higher risk business proprietor will be required to obtain a business licence from the local government in which their business is located. Building requirements for higher risk practices will be in place in the Building Code of Australia. Local governments will be able to charge a fee for one routine inspection per year only. If an inspection on complaint results in the service of a remedial notice, an inspection fee may be charged to determine compliance with the notice. Local governments will have the power to suspend or cancel business licences.

USEFUL WEBSITES

Health Regulation 1996 is available at:

<http://www.legislation.qld.gov.au/OQPChome.htm>

Risk Report and Public Benefit Test report prepared as part of the review of the legislation at:

www.health.qld.gov.au/lpu/hairskin.htm

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SOUTH AUSTRALIA

In South Australia, the following legislation relates to Body Art industry:

- *Summary Offences Act 1953*; and
- *Public and Environmental Health Act 1987*.

Age of Consent – It is an offence to tattoo a minor (under 18) under S21A of *the Summary Offences Act 1953*. A Private Member's Bill is currently before Parliament to extend that to cover other body piercing of children.

Sections 15 & 17 of the *Public and Environmental Health Act 1987* give local councils powers to remedy insanitary conditions or activities giving rise to a risk to health. Guidelines have been issued to assist councils and persons engaging in skin penetration activities in proper infection control procedures. They could form the basis for a notice under those sections if an operator in the industry has inadequate procedures.

SA Health Commission Guidelines on the Safe and Hygienic Practice of Skin Penetration were issued in November 1995. They cover:

- aseptic or "non-touch" procedures;
- cleaning disinfection & sterilisation of equipment;
- disinfectants;
- hand washing and personal hygiene;
- skin preparation;
- needle stick injuries and cleaning of wounds;
- general hygiene;
- waste disposal;
- disposal of sharps; and
- storage & safe handling of chemicals.

A review of the guidelines has just commenced involving industry, local council, Environmental Health Officers (EHOs) and other professionals.

USEFUL WEBSITES

South Australian legislation is available at:

www.parliament.sa.gov.au/legislation

Guidelines (currently only available in hard copy) and will soon be available at:

www.dhs.sa.gov.au

Information on **Skin Penetration - Safe Practice for Tattooing and Body Piercing** is available on www.dhs.sa.gov.au/pehs/topics/topic-body-piercing.htm

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TASMANIA

In Tasmania, the following legislation relates to the Body Art Industry:

- *Public Health Act 1997.*

Part 5-Division 4 - Public Health Risk Activities of the Act provides for licensing of premises that undertake public health risk activities. These include such activities as tattooing, body piercing, ear piercing, and could be extended to any other similar activities.

Section 109 of the Act requires that public health risk activities must be carried out in accordance with the conditions of the licence, relevant guidelines, and in a manner that does not pose a risk to public health.

The Tasmanian Department of Health has developed guidelines for several public health risk activities. The guidelines are outcome based (outcome required- this is a statutory requirement for that specific activity) and also provide information to assist the operator with compliance with the minimum requirements set in the Act and the guidelines. The guidelines are linked to various national standards in relation to infection control.

The Department has separate guidelines for Tattooing, Ear and Body Piercing and Acupuncture.

The development of the guidelines was undertaken after extensive consultation with the industry. The legislation is new, and is considered to be flexible, via the use of the outcome based guidelines system that enables new activities to be dealt with under the Act without extensive legislative development /process and for the easy adoption of new infection control techniques within the existing guidelines.

The provision of information on infection control is considered very important within the guidelines as most activities in relation to the Body Art Industry do not have any methods of formal training.

USEFUL WEBSITES

The *Public Health Act*, and guidelines that relate to Public Health Risk Activities are available at: <http://www.dhhs.tas.gov.au/services/publichealth/index.html>

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VICTORIA

The following Victorian legislation relates to Infection Control in the Body Art Industry:

- Part 19 of the *Health Act 1958*;
- Part 5 of the Health (Infectious Diseases) Regulations 2001;
- Health (Exempt Businesses) Regulations 2000; and
- Health (Registration of Premises) Regulations 1992.

Subject to certain exceptions, a person conducting a business of tattooing, ear piercing, acupuncture or any other process involving the penetration of the skin in a living human being must register with the council any premises upon which that person conducts that business.

There are also requirements regarding cleanliness of premises and equipment and hygiene.

There are also the Standards of Practice for Tattooing and Body Piercing, which were published by the Department of Human Services in August 1996 (sometimes referred to as "Tattooing and Body Piercing Standards of Practice") and Standards of Practice for Ear Piercing published by the Department of Human Services in June 1994.

These standards are to be reviewed and updated since they refer to the repealed Health (Infectious Diseases) Regulations 1990. The Health (Registration of Premises) Regulations 1992 are also under review as they are due to sunset in August 2002.

The Associations that represent these industries will be invited to participate on a Working Group to review these Standards. It is anticipated that this process will commence in early 2002 and that the guidelines, once finalised, will be industry accepted and user friendly.

The *Summary Offences Act 1966* (Vic) provides:

Division 5 - Tattooing of Juveniles

42. Tattooing of juveniles

- (1) Any person who performs any tattooing or like process on any person under the age of 18 years shall be guilty of an offence.

Penalty: 5 penalty units.

- (2) Nothing in this Division shall apply to any tattooing or other like process performed by or at the written request of a registered medical practitioner within the meaning of the ***Medical Practice Act 1994***.

An inquiry into the *Summary Offences Act 1996* was undertaken by the Scrutiny of Acts and Regulations Committee, and a discussion paper was out for comment in May 2001. The inquiry was requested by the Victorian Parliament. The Final Report (Inquiry into the *Summary Offences Act 1996*) was tabled on 30 November and recommended that section 42 Tattooing of Juveniles be retained, pending a much wider review of tattooing and body piercing.

USEFUL WEBSITES

The Regulatory Impact Statements for the Health (Infectious Diseases) Regulations 2001 is available at:

http://www.dhs.vic.gov.au/phd/infectious_disease/ris.htm

Standards are available at:

<http://www.dhs.vic.gov.au/phd/topics3.htm#infectiousdiseases>

The *Health Act 1958* is available at:

<http://www.dms.dpc.vic.gov.au/l2d/H/ACT00954/index.html>

The Health (Infectious Diseases) Regulations 2001 are available at:

<http://www.dms.dpc.vic.gov.au/l2d/H/STAT00907/index.html>

The Health (Exempt Businesses) Regulations 2000 are available at:

<http://www.dms.dpc.vic.gov.au/l2d/H/STAT00725/index.html>

The Health (Registration of Premises) Regulations 1992 are available at:

<http://www.dms.dpc.vic.gov.au/l2d/H/STAT00138/index.html>

Victorian Acts and Regulations are available at:

<http://www.dms.dpc.vic.gov.au/>

Consolidations of Victorian Acts and Regulations should be visited. The consolidations are updated daily and also have historical consolidations. These are located at: **Law Today**

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WESTERN AUSTRALIA

In Western Australia the following legislation relates to Body Art Industry:

- *Health (Skin Penetration Procedure) Regulations 1998* (the Regulations); and
- Section 138A of the *Child Welfare Act 1947*.

The Regulations were brought into operation on 1 June 1998 and were made under section 343A as read with section 249(10) of the *Health Act 1911*.

The Regulations adopt the "Code of Practice for Skin Penetration Procedures (Western Australia Department of Health)" (the Code) which was developed and published by the Executive Director, Public Health under section 344A(2) of the Act.

There is no Regulation Impact Statement requirement in Western Australia.

The Regulations were made to assist in preventing the spread of blood-borne infectious diseases such as Human Immunodeficiency Virus (HIV) infection and Hepatitis B and C during the course of skin penetration procedures as undertaken in the body piercing; tattooing; acupuncture and beauty therapy industries.

The Regulations do not have application to skin penetration procedures carried out by -

- medical practitioners and dentists and persons acting under their direction and supervision;
- podiatrists; and
- nurses.

The Regulations also required owners of establishments, where skin penetration procedures are or are intended to be carried out, to notify the relevant local government of the name and address of the establishment. Such notice is required to enable local governments to institute appropriate public health surveillance mechanisms to ensure that the Regulations are being complied with.

The Regulations may need some slight change, following a consultation process that is concluding shortly.

The Code sets out the minimum standards of infection control that must be complied with by anyone who performs a skin penetration procedure, which includes any procedure that punctures, cuts or tears the skin or mucous membrane. It is procedure based and provides specific direction to the acupuncture, beauty therapy, body piercing and tattooing industries.

The Code has the general acceptance of industry and consumers and is working well.

The Department of Consumer and Employment Protection have also developed a "Code of Practice on the Management of HIV/AIDs and Hepatitis at Workplaces". This Code covers 'Body Art' matters and is tied into the *WA Occupational Safety and Health Act 1984* through the Occupational Safety and Health Regulations 1996.

Section 138A of the *Child Welfare Act* 1947 provides:

138A. Tattooing

Except where the Director-General, with the consent of the parents or guardians of the child given by reason of long standing cultural or religious belief, otherwise authorizes, a person over the age of 18 years who for gain or reward tattoos, or otherwise makes a permanent mark or design resembling a tattoo on the skin of, any child or causes any such tattoo, mark or design to be made commits an offence.

Penalty: \$400 or imprisonment for 6 months, or both such fine and such imprisonment.

USEFUL WEBSITE

Western Australian Health Legislation is available at:

<http://www.slp.wa.gov.au/statutes/swans.nsf/html/agency+hdwa+acts?OpenDocument>

Code of Practice on the Management of HIV/AIDs and Hepatitis at Workplaces is available at:

<http://www.safetyline.wa.gov.au/pagebin/pg007571.htm>

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CONCLUSION

As evidenced by the snapshot of legislation in each jurisdiction provided in this Review, although there is wide variation the Body Art industry is nevertheless regulated to some extent in all jurisdictions. While some jurisdictions have specific legislation, others manage the industry through Standards and Codes of Practice and some have both. In order to obtain a complete picture of the situation with regard to the Body Art industry, a detailed study would be required to examine related issues such as age of consent (reflected in South Australia) and training of personnel undertaking employment in the industry. It would also be useful to examine enforcement/implementation mechanisms for the legislation, standards and codes of practice, in order to understand the successes and failures of the existing systems.