

# Children and Community Services Amendment (Body Piercing) Bill 2007

## Explanatory Memorandum (E230)

(Introduced by Dr Janet Woollard MLA)

This bill amends the *Children and Community Services Act 2004* to make it an offence for a person to pierce any part of the body of a child (defined in the *Act* as a person under the age of 18) without obtaining written consent of the child's parent. Currently, in Western Australia, it is an offence for a person to tattoo or brand a child without written parental consent. This bill, therefore, simply brings the legal requirements for piercing, tattooing and branding of children into line.

The bill excludes piercing for medical or therapeutic purposes. This follows similar bills currently under consideration by the South Australian and Victorian Parliaments. This exclusion recognises that it will not always be practicable for a parent to provide written consent to the administration of intravenous injections or acupuncture treatment by authorised medical or therapeutic practitioners.

This bill differs slightly from the bills currently before the South Australian and Victorian Parliaments in two respects.

First, the South Australian and Victorian bills will make it an offence for a person to pierce any part of the body of a child unless a parent or guardian accompanies the child and gives consent to the piercing. In the present bill, written consent by the parent will suffice and, therefore, there will be no need for the parent to accompany the child. This approach has been adopted so that the legal requirements for piercing are aligned with those that already operate in this state with respect to the tattooing or branding of a child.

Second, the South Australian bill will provide a defence where the person carrying out the piercing has reasonable cause to believe, and does believe, that the child is 18 years or over. However, there is no equivalent defence currently in relation to tattooing or branding in Western Australia under the *Children and Community Services Act 2004*. The defence that is being considered in South Australia, therefore, has not been included in this bill, for consistency with the provisions that already govern tattooing and branding of children in Western Australia.

The bill also creates an offence of allowing a child to pierce particular parts of the body, namely the genitalia and nipples, regardless of whether parental consent is provided. This provision is modelled on legislation operating in Queensland, under section 18 of the *Summary Offences Act 2005*, which prohibits a person from piercing the genitalia or a nipple of a child, regardless of whether the child has obtained written consent from a parent or guardian, or is accompanied by a parent or guardian.

### Part 1 – Preliminary

#### Clause 1 Short Title

Provides for the Act to be cited as the *Children and Community Services Amendment (Body Piercing) Act 2007*.

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### Clause 2 Commencement

Provides for this Act to come into operation on a day fixed by proclamation.

### Part 2 – Amendment of the *Children and Community Services Act 2004*

#### Clause 3 The Act amended

Provides that the amendment to this Part is to the *Children and Community Services Act 2004*.

#### Clause 4 Sections 103A and 103B inserted

Adds sections 103A and 103B to the *Children and Community Services Act 2004*.

**Section 103A(1)** makes it an offence, subject to the proposed section 103B, for any person to pierce any part of a child's body without the written consent of a parent.

A "child" is already defined in section 4 of the Act as person under the age of 18.

The penalty under this section is a fine of \$12 000 and one year imprisonment. This is the same penalty as that under section 103 of the Act requiring parental consent for a person under 18 to get a tattoo or be branded.

**Section 103A(2)** provides that if a piercing is done for a medical or therapeutic purpose then section 103A would not apply.

**Section 103B(1)** makes it an offence, punishable by a penalty of a fine of \$12 000 and one year imprisonment, for a person to perform body piercing on a child in any of the areas stipulated under the section, namely the external genitalia of a female, the genitalia of a male and the nipples of a child.

The object of this provision is to provide a ban on a person who is under 18 years of age acquiring a piercing in those areas, regardless of whether he or she has obtained parental consent.

**Section 103B(2)** states that it is not a defence for a person who commits an offence under subsection (1) to say that the child, or a parent of the child, consented to the body piercing of the particular areas mentioned in subsection (1).