are scheduled to proceed for set periods in excess of one year.

This amendment to the Victorian Managed Insurance Authority Act 1996 has been included in this bill due to portfolio alignment and as a related financial risk management matter.

I commend the bill to the house.

Debate adjourned on motion of Mr WELLS (Scoresby).

Debate adjourned until Thursday, 26 June.

**SUMMARY OFFENCES AMENDMENT (TATTOOING AND BODY PIERCING) BILL**

*Statement of compatibility*

Mr HULLS (Attorney-General) tabled following statement on accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008.

In my opinion, the Summary Offences Amendment (Tattooing and Body Piercing) Bill 2008 (the bill), as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

**Overview of bill**

The bill will promote the health and wellbeing of young people by appropriately regulating the conduct of body piercing, tattooing and related processes. Specifically, the bill will amend the Summary Offences Act 1966 by:

(a) increasing the maximum penalty for the existing offence of tattooing or performing a 'like process' on a person aged under 18 years from 5 penalty units to 60 penalty units

(b) defining 'like process' as including scarification, tongue splitting, branding and beading

(c) making it an offence for a body piercer to perform a non-intimate body piercing on a person aged under 16 years unless consent is provided by a parent or guardian

(d) making it an offence for a body piercer to perform an intimate body piercing on a person aged under 18 years

(e) making it an offence for a body piercer to employ, direct or allow a person aged under 16 years to perform illegal piercings on young people (the body piercing offences only apply to persons aged 16 or more).

The new body piercing offences, like the existing offence of tattooing or performing a like process on a child, will not apply to health professionals acting in good faith. Furthermore, it will be a defence to a body piercing offence for the accused to prove that he or she had seen an evidence-of-age document indicating that the young person in question had attained the relevant age of consent.

**Human rights issues**

1. Human rights protected by the charter that are relevant to the bill

**Section 8: recognition and equality before the law**

Section 8(3) of the charter provides that every person is equal before the law and is entitled to equal protection of the law without discrimination within the meaning of, and on the basis of an attribute set out in, the Equal Opportunity Act 1995.

Clauses 3 and 4 of the bill engage prima facie limit this right by restricting the availability of certain body piercing and other body modification procedures on the basis of age. Specifically, clause 4 restricts the availability of non-intimate body piercing of persons aged under 16 to situations where that person's parent or guardian has consented to the procedure, and provides that intimate body piercing cannot be performed on a person aged under 18 years. Clause 3 provides that scarification, tongue splitting, branding and beading cannot be performed on a person aged under 18 years.

However, this right is not absolute, but is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2 below.

**Section 15: freedom of expression**

Section 15(2) of the charter provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, including by way of art.

Section 15(3) provides that special duties and responsibilities attach to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary, amongst other things, to respect the rights of other persons, or for the protection of public order, public health or public morality.

Clauses 3 and 4 of the bill interfere with young people’s right to freedom of expression by restricting access, on the basis of age, to certain types of body art.

However, the interference is reasonably necessary to protect public health and public morality, and thus constitutes a lawful restriction within the ambit of section 15(3).

**Section 17: protection of families and children**

Section 17(2) of the charter provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

The bill engages, though does not limit, this right, because it seeks to protect children from risks to their health and wellbeing associated with body piercing.
Section 19: cultural rights

Section 19 of the charter provides that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with persons of that background, to enjoy his or her culture.

Clauses 3 and 4 of the bill may interfere with cultural rights by restricting access, on the basis of age, to certain types of body art that may have cultural motivations (e.g., body piercing or scarification may have cultural significance in some cultures).

However, this right is not absolute, but is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2 below.

Section 25(1): right to be presumed innocent

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Clause 4 of the bill engages, and prima facie limits the right to be presumed innocent, because the two body piercing offences contained therein include a defence of the accused person proving that he or she has seen an evidence-of-age document indicating that the young person had attained the relevant age of consent.

However, this right is not absolute, but is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2 below.

2. Consideration of reasonable limitations — section 7(2)

Section 8 of the charter: recognition and equality before the law and clauses 3 and 4 of the bill; and

Section 19 of the charter: cultural rights and clauses 3 and 4 of the bill; and

Section 25(1) of the charter: right to be presumed innocent and clause 4 of the bill.

(a) the nature of the right being limited

The prohibition on discrimination is of fundamental importance to the protection of human rights, as reflected in the preamble to the charter.

The protection of cultural rights is also of great importance in a vibrant, multicultural community like Victoria.

The right to be presumed innocent is a well-recognised civil and political right and a fundamental principle of the common law.

However, none of these rights is absolute, but may be subject to reasonable limitations in accordance with section 7 of the charter.

(b) the importance of the purpose of the limitation

The limitation on the equality right, cultural rights and the right to be presumed innocent is for the same purpose, which is a purpose of great importance, being the protection of health and wellbeing of young people, the protection of young people from inappropriate contact by adults, and the protection of the best interests of the child which is protected in section 17 of the charter.

(c) the nature and extent of the limitation

The nature of the limitation in clauses 3 and 4 of the bill is to restrict young people’s access to certain body piercing and other body-modification procedures on the basis of age. This may also limit cultural rights where the procedure is a cultural practice.

Clause 4 limits the right of an accused person to be presumed innocent, in that a person charged with a body piercing offence bears the legal onus of establishing the defence that he or she had seen an evidence-of-age document at the time of the offence indicating that the young person had attained the relevant age of consent.

(d) the relationship between the limitation and its purpose

There is a close, rational and proportionate relationship between the limitation and its purpose.

The purpose of clauses 3 and 4 of the bill is to protect the health and wellbeing of young people.

Clause 4 deals with body piercing. Health risks associated with body piercing are well documented and include the transmission of blood-borne viruses (e.g. Hepatitis C), infection, scarring, nerve damage (e.g. eyebrow piercings) and interference with speaking or chewing or irritation or trauma to teeth and gums (e.g. tongue piercings).

Furthermore, these health risks materialise with some regularity. Between July 2007 and April 2008 approximately 40 people were admitted to Victorian hospitals suffering injuries or illnesses caused by body piercing. Research conducted in 2003 found that between July 2000 and July 2002, at least 100 mostly young people presented to Victorian hospital emergency departments with complaints associated with body piercing. Furthermore, South Australian research published in 2006 supports anecdotal evidence that a significant number of patients present to general practitioners with complaints associated with body piercing.

As such, the decision to undergo a non-intimate body piercing procedure may have significant, enduring consequences, and should not be undertaken lightly. Indeed sound, informed choices require the capacity to maturely, intelligently and responsibly identify, consider and manage health risks associated with body piercing. Generally speaking, 16-year-olds possess these capacities. However, persons aged under 16 years require, and will benefit from, the involvement of a parent or guardian in the decision-making process.

Clause 4 of the bill will thereby encourage informed choices (including selecting the type of piercing and a reputable service provider), a reduction in impulse piercings, appropriate aftercare and prompt identification and treatment of complications, and thus improve the health and wellbeing of young people.

Clause 4 of the bill also prohibits intimate body piercing from being conducted on a person aged under 18 years. Victorian law places great importance on protecting children and young people from inappropriate, sexual contact from adults, and deterring indecent and obscene behaviour (e.g., sex offences in the Crimes Act 1958; obscene behaviour and other public order offences in the Summary Offences Act 1966). Clause 4 is in keeping with this general protection provided to children.
Clause 4 of the bill will also have a small and justifiable limitation on cultural practices. The bill was released as an exposure draft for public comment during January-March 2008. Consultation with multicultural groups confirmed that any impact would be minimal, given that persons aged under 16 years can continue to obtain non-intimate piercings with parental consent, which is likely to be forthcoming if the procedure has cultural resonance.

Finally, clause 4 of the bill will impose a justifiable limit on the right to be presumed innocent. The defendant bears the legal burden of establishing the defence of having ignited an evidence-of-age document indicating that the young person had attained the relevant age of consent at the time of the offence. This information is uniquely within the knowledge of the defendant, and could not be reasonably ascertained by the prosecution. As such, without this limitation, the body piercing offences would be unenforceable. This is also the approach taken in similar offences, such as those relating to the supply of alcohol and tobacco to young people.

Clause 3 of the bill prohibits scarring, tongue splitting, branding and hazarding on persons aged under 18 years.

Scarring, tongue splitting, branding and hazarding are more severe and more difficult to reverse than body piercing, and carry similar health risks. Given these potentially significant and enduring consequences, such procedures should only be available to adults, consistent with the existing approach to tattooing.

Whilst scarring may have a cultural basis in some communities, the consultation process on the exposure draft bill did not reveal evidence of this practice occurring in Victoria. Furthermore, the intrusive and permanent nature of scarring warrants a more restrictive approach to protect the health and wellbeing of young people. This accords with the current approach to tattooing.

(a) any less restrictive means reasonably available to achieve its purpose

Some submissions on the exposure draft bill noted that young people aged under 16 can consent to medical procedures if they have capacity, i.e., they possess the maturity and intelligence to fully understand what is proposed, and suggested that this approach be adopted in relation to body piercing.

However, a ‘capacity to consent’ approach would not achieve the purpose of the bill. This approach is appropriate for medical procedures, where practitioners can draw upon extensive training, experience and support services when assessing a young person’s capacity to consent. Furthermore, if consent is given, the resulting procedure takes place in a clinical environment, and practitioners are subject to strong accountability mechanisms. This is a vastly different environment to the body piercing industry, which cannot be expected to deliver this type of individualised, accountable assessments of capacity.

(f) any other relevant factors

The limitations in the bill accord with standard industry practice across reputable body piercing operators, and were supported by the majority of individuals and organisations that provided feedback to the government when the bill was released for comment as an exposure draft during January-March 2008. This is further evidence that the limitations are rational, proportionate and reasonable.

The limitations in the bill also accord with other age-based restrictions on access to goods and services, such as tobacco, liquor, gaming, films and literature.

Conclusion

The bill protects the health and wellbeing of young people.

To achieve its purpose, the bill interferes with rights to equality before the law, freedom of expression and culture and the presumption of innocence, which are protected by the charter. For the reasons outlined above, I consider that such interference is necessary, justifiable and proportionate, and that the bill is compatible with the charter.

Rob Hulls, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

This bill delivers on the government’s commitment to reform the law relating to tattooing and body piercing to protect the health and wellbeing of young people.

Body piercing, tattooing and related forms of body art, whilst having ancient origins, have become increasingly popular in Victoria and other Western societies in recent years, particularly amongst young people. Eyebrows, tongues, navel, neck, nipple and genitals have joined the traditional earlobe as preferred piercing sites, whilst bending, branding and scarring are emerging forms of body decoration.

The health risks associated with body piercing, tattooing and like processes are well documented and include the transmission of blood-borne viruses (for example, Hepatitis C), infections, nerve damage and scarring. These risks materialise with some regularity. From July 2007 to April 2008 around 40 people were admitted to Victorian hospitals with complaints associated with body piercing. Furthermore, Victorian and interstate research indicates that significant numbers of patients present to hospital emergency departments and medical practitioners with complications from body piercing.

In this context the government is obliged to ensure that laws mitigate the risks associated with body piercing, tattooing and like processes, and protect the health and welfare of Victorians, particularly our young people. With this in mind, the government introduced new health regulations in 2004 requiring body piercers to provide information on health risks to prospective customers, and also produced guidelines to assist body piercers in complying with health standards.