

Kids with Ink

Summary Offences Act
Case Studies



Presented by Louisa Dicker
Senior Associate, Macpherson Kelley

Agenda



Relevant Legislation



Case Studies
Tips and Tricks



Questions

Regulating tattooing and skin pen

Summary Offences Act 1966 (Vic)

Tattooing – section 42

It is an offence to perform any tattooing or like process on any person under the age of 18 - *Section 42(1)*

Penalty: 60 Penalty Units

Tattooing includes 'like process' such as –

- > Beading (cutting skin and inserting an object beneath the skin to produce a lump)
- > Branding (application of heat, cold or a substance to skin to produce scar tissue)
- > Scarification (cutting skins to create scar tissue)
- > Tongue splitting (cutting the tongue to divide the tongue or part of it, into two or more segments)

Regulating tattooing and skin pen

Summary Offences Act 1966 (Vic)

Body piercing – section 43

Body piercer means a person who is 16 or over who either:

- > Carries on a body piercing business; or
- > Is employed in a body piercing business; or
- > Performs body piercing for a fee, wage or other remuneration or payment.

Body piercing means the piercing of the human body to create one or many entry and/or exit holes for the insertion of an object.

Intimate piercing – section 44

- > Body piercer must not pierce the genitalia, anal region, perineum or nipples of anyone under 18 years regardless of consent.
Penalty: 60 penalty units
- > Body piercers may have a defence available to them if at the time of the piercing the person,

they provided evidence which indicated they were 18 years or older (i.e. fake IDs).

- > Body piercer must not employ/direct/allow person under 16 years perform piercing the genitalia, anal region, perineum or nipples of anyone under 18 years.

Penalty: 60 penalty units

Non-intimate piercing – section 44A

- > Body piercer must not pierce anyone under 16 years unless a parent/guardian consents; or if the person to be pierced is over 10 years and has capacity to consent.

Penalty: 20 penalty units

- > Body piercers may have a defence available to them if at the time of the piercing the person, they provided evidence which indicated they were 16 years or older (i.e. fake IDs)

Regulating tattooing and skin pen

Public Health and Wellbeing Act 2008 (Vic)

Registered businesses

Under section 68 of the *Public Health and Wellbeing Act 2008 (Vic)* a person conducting

- > Business involving skin penetration
- > Business involving tattooing
- > Business that poses a risk to public health

Must register their business with their Council under section 69.

Penalty Natural person: 60 penalty units
Body corporate: 300 penalty units

Case study **1**

Case study 1

Offending

- > School reports to mother about tattooing of her 14 year old daughter
- > Mother then reports to Victoria Police
- > Victoria Police then reports to Council
- > School confirmed they were aware of five underage students who had been tattooed by the Accused
- > Council sought and was granted a search warrant for the premises (residential address) where they seized considerable tattooing materials
- > Council received three statements that alleged three young girls had been tattooed by the Accused in his house

Case study 1

Charges

Public Health and Wellbeing Act 2008 (Vic) charge

Accused was charged with one charge under section 69 of the *Public Health and Wellbeing Act 2008 (Vic)*.

The Accused had/was operating a tattoo business that was not registered with Council.

The penalty for failing to register the tattoo business is 60 penalty units for the natural person.

Summary Offences Act 1966 (Vic) charge

Accused was also charged with one charge under section 42 of the *Summary Offences Act 1966 (Vic)*.

The Accused had tattooed minors.

The penalty for tattooing minors is 60 penalty units.

Case study 1

Tattooing equipment seized by Council during its investigation



Case study 1

Personal Circumstances of the Accused

- > 16 years of age at time of offending
- > During an interview conducted by Council in the presence of a Youth Support Worker, the Accused, admitted that over a 3 month period he had tattooed approximately 20 school aged teens in their own homes. The Accused estimated that 6 of the 20 were girls and all victims wore school uniforms when being tattooed and attended local secondary/high schools. The Accused stated:-
 - > - he tattooed wrists, pinky fingers, palms, hands, arms and hipbones;
 - > - he performed a couple of these tattoos for free but usually charged a \$5 fee per tattoo;
 - > - he posted some of his work on his Facebook page;
 - > - he used the money he earned for tattooing for bus fares, food, rent or to just buy stuff;
 - > - he purchased the tattooing equipment off ebay using Centrelink payments;
 - > - he admitted getting involved in tattooing because he liked the sound of the gun, he learnt the craft through setting up guides through research on the internet and watching youtube clips;
 - > - he practiced for a couple of months (including on himself) before he performed his first tattoo.

Case study 1

First mention at the Magistrates' Court - Children's Court Division

Outcome

The matter resolved as a plea of guilty.

Ultimately, the Accused was sentenced as follows:

- > Six month Good Behaviour Bond
- > Warned against further offending
- > Council was granted a forfeiture order to dispose of items seized during the search warrant



Case study **2**


Case study 2

Offending

- > Council received a complaint that the Accused was trading as a tattooist out of her residential premises
- > Council had no records of any business registered at the Accused's address
- > Council sought and was granted a search warrant for the premises where they seized considerable tattooing materials



Case study 2



Year of the end of the world 36 of 103 Options Share Like

Georgia Lee Hatcher
Subscribe · January 17 via mobile


Phase one of leg piece :D — with Pickles Morris Dylan.

Like · Share


7 people like this.

Pickles Morris Dylan cheers for stage one! I'm pretty excited about it.
January 17 at 12:22am · Like

Georgia Lee Hatcher So am I! Somewhat nervous but I think it's gonna end up just tits :D
January 17 at 12:24am · Like


Sponsored  See All

Dress MUST GO! (\$9 Today)
urban-shoppers.com




Ending NOW! Today ONLY. Save up to 85% OFF Retail NOW! Click Here Now!

Lose Belly Fat



Cut down a bit of your belly fat everyday by following this surprising diet tip!

Case study 2



the end of the world 56 of 103

Options Share Like

Georgia Lee Hatcher
Subscribe · April 23 via mobile

With our powers combined, WE ARE TEAM AWESOME! — with Dylan Williams.

Like · Share

2 people like this.

Sponsored

Are you losing it?
gamblinghelponline.o...
To find out if Online Gambling becoming a problem for you, here now.
I dropped a grand here.

Your Special Day
rydgeseventspreston....
Rydges Events Preston has s that are perfect for wedding receptions.
RYDGES
EVENTS HILL CITY PRESTON

Lose Belly Fat
Cut down a bit of your belly f everyday by following this su diet tip!

Case study 2

Charge

Public Health and Wellbeing Act 2008 (Vic)

Accused was charged with one charge under the *Public Health and Wellbeing Act 2008 (Vic)*.

Section 69 – operating a tattoo business that was not registered with Council.

The penalty for failing to register the tattoo business was 60 penalty units for the natural person.



Case study 2

- > The Accused initially plead not guilty at the First Mention, with the intention of a contested hearing to test the concept of 'business'.
- > The matter was listed for a Further Mention and then adjourned to a Contest Mention.



Case study 2

Accused's Submissions

"It was not a business, it was a hobby"

Accused submitted that it could not be proven beyond reasonable doubt that the Accused was engaged in a 'business'.

Accused submitted that if it was proven to be a hobby, then the charge cannot be supported as the charge required a *business* to be registered.

Prosecution's Submissions

Prosecution submitted that the Accused was indeed undertaking a business for the following reasons:

- > The PHW Act provides a wide definition of business which includes 'trade, manufacture, process, occupation';
- > The type and quantity of tattooing materials seized during the warrant was substantial;
- > The Accused admitted to being paid "\$10" for tattoos during the search warrant interview, and otherwise performing tattooing for the exchange of equipment/needles or alcohol and cigarettes;
- > The Accused posted various materials on Facebook where she uploaded images of tattoos on herself and others, and 'advertised' her work and services.

Case study 2

Outcome – Contest Mention

Following submissions and a sentence indication being provided, the Accused plead guilty and the matter resolved on that basis.

Ultimately, the Accused was sentenced as follows:

- > Undertaking of good behaviour for 12 months;
- > Costs of \$2,000.



Tips and tricks

- > Underage victims and young/disadvantaged offenders;
- > Search warrants and forfeiture orders;
- > Business is a wide definition – a business can be implied by conduct;
- > Objective of the PHW Act – regulating activities which pose a risk to public health and wellbeing;
- > Check authorisations and delegations;
- > Statements from victims (factual and victim impact statements) .



Questions?



Louisa Dicker

Senior Associate
Litigation and Dispute Resolution
Dandenong, VIC

D: +61 3 9794 2576

E: louisa.dicker@mk.com.au

Disclaimer

Whilst all reasonable efforts have been made to substantiate the information contained in this presentation it is of a general nature only. Comments do not represent the specific advice therefore you should not try to act on this information.

If you require personal advice you should contact Macpherson Kelley. No responsibility can be accepted if the information is incorrect or inaccurate



@mklawyers



Macpherson Kelley

> **New South Wales**
Sydney

> **Queensland**
Brisbane

> **Victoria**
Melbourne
Dandenong

1800 888 966
info@mk.com.au
mk.com.au

Commercial
Litigation & Dispute Resolution
Private Clients
Property & Construction
Workplace Relations