

22. REGULATING THE ACTIVITIES OF BEAUTICIANS, TATTOOISTS AND SKIN PIERCERS



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PURPOSE OF REPORT

1. To report to the Council as requested, on the following motion moved by the Mayor and seconded by Councillor Broughton and adopted by the Council at its meeting on the 23 July 2009:

The Council asks staff to report back to the Council on whether there is a perceived problem regulating the activities of beauticians, tattooists and skin piercers, and the processes to make a bylaw.

EXECUTIVE SUMMARY

Perceived problem

2. The Ministry of Health has advised that the practice of body piercing and tattooing are activities that can affect public health when operators use unsafe techniques. To provide guidance on means of control, the Ministry issued in 1998 *Guidelines for the Safe Piercing of Skin* which set out means of reducing risks of transmitting infectious diseases. There are significant hazards posed by contact with blood and body fluids, such as (the risk of) transmitting blood-borne viral diseases.¹ The first set guidelines were developed in 1989 in response to the then HIV epidemic and hepatitis B infection (and subsequently hepatitis C). These diseases are all easily passed from person to person by infected blood. The guidelines are written specifically for the tattooing and body piercing industry but where relevant they apply to acupuncturists, beauty therapists, hairdressers, pharmacists, jewellers, or other operators performing skin piercing procedures.
3. Advice from the local Medical Officer of Health has revealed that there is no evidence that any cases of HIV, hepatitis B or hepatitis C in Canterbury are associated with tattooing or skin piercing but rather relate to intravenous drug users. This has been so for a considerable time as a similar finding was revealed in 2002 when the issue of a bylaw was last examined in Christchurch.² There are possible risks from bacteria such as *Staphylococcus* from a number of skin treatment actions, including piercing of the skin, but there is no evidence of the level of post procedure complications. In any case these, if they occur, may be related to activities outside the initial activity and relate to failure by the client to follow post procedure advice. The latter infections are not considered to be a public health problem as they are not normally communicable.
4. There are no national regulations requiring the control or registration of skin piercing practitioners or premises and none are being promulgated at present. The Guidelines produced by the Ministry have the purpose of helping those in the skin piercing industry to better understand how to protect themselves and their clients from the risk of infection. They cover, in some depth, how to minimise the risk of transmitting blood borne and other infections by the use of standard precautions during skin piercing procedures. They set down the means of ensuring appliances and premises are clean and where appropriate sterile before being used for skin piercing. Means of minimising the risk of transmitting micro-organisms between the operator, the appliances used and other clients are specified. The 41 pages of the Guidelines cover in some detail issues relating to obtaining consent, preparing inks and other equipment, skin preparation and disinfection, personal hygiene, managing waste, including sharps, care of wounds, sterilisation of instruments, the keeping of records, and health and safety in the workplace, including monitoring of operators as to their antibody status for the appropriate viruses.

¹ Ministry of Health, *Guidelines for the Safe Piercing of Skin*, 1998

² Isobel Stout, Senior Environmental Health Officer. Skin Piercing and Tattooing, Draft Report for Regulatory and Consents Committee, Christchurch City Council, 25 September 2002

Christchurch Situation

5. The Council does not keep a record of tattoo, body piercing or beauty treatment premises. Records of hairdressers are kept as required by the Health (Hairdressers) Regulations 1980 and some of these offer skin piercing, waxing and depilatory services. In 2009 there are 319 hairdressers registered in the city. A search of the 2009 Christchurch Yellow Pages revealed there were at least 15 premises advertising body piercing, three of which were also hairdressers, and 21 premises advertising tattooing, four of which also offered piercing. The number of premises offering waxing was 115 and 43 provided electrolysis. In Christchurch there have been no recent complaints about any of the above premises or activities, although some time ago (2002) one person complained about her daughter obtaining body piercing without her approval. The issue of consent is considered in the Guidelines but a hard and fast rule is not stated. The Council has raised the issue of regulation of tattooists and skin piercing businesses in the past and reminded government of this in its submissions on the Public Health Bill in 2008.

The quotation from the Guidelines, *Skin piercing is a risk activity. There is the potential to cause harm and injury to a client or operator through unsafe practice. Public health is directly affected by the quality of the skin piercing service.*³ sums up the reasons that those with a statutory role in protecting and promoting public health, as the Christchurch City Council does, may be concerned with monitoring and reviewing policies in this activity.

6. A survey of local tattooists and skin piercers undertaken in 1998 indicated that many were keen to have a certificate from the Council to showing a form of approval. It was not considered that there would be sufficient certainty that operators were complying with the operational guidelines without significant costs to the Council and it is unclear as to the benefits of this in reducing communicable disease cases.

Current Action

7. The environmental health staff of the Inspections and Enforcement Unit have, on the request of some operators, inspected premises using the Ministry of Health Guidelines as the basis for compliance. A public information brochure on tattooing has been printed and is available both in hard copy and on-line. The current view of the Inspections and Enforcement Unit is that a regulation promulgated by central government would be the preferred approach, particularly in regard to enforcement requirements and for national consistency. Any local health issues at present arising from tattooing and skin piercing services are reported to Community and Public Health. It should be noted that during the recent LTCCP submission process Community Public Health did not seek local regulation of these services.

Making bylaws

8. Section 155 states that before commencing the process for making a bylaw the Council must determine whether a bylaw is the most appropriate way of addressing the problem. The Council needs to identify the problem, or perceived problem, and then the outcome sought. The process must then undertake the identification and assessment of options to achieve the outcome sought. The consideration of the views and preferences of affected or interested people should be taken into account. If a bylaw is the preferred option the Council must also determine whether it is the most appropriate form of bylaw and is not inconsistent with the New Zealand Bill of Rights Act 1990.
9. Six of 75 territorial authorities in the country have introduced bylaws that require the registration of premises. Auckland City, Manukau City, Napier City, and Dunedin City have bylaws which are closely based upon the advice given in the Ministry guidelines. Timaru City and Waimate District have bylaws in a slightly different format and both refer to Council Codes of Practice for compliance. Premises and operators covered by the bylaws include tattoo parlours, skin or body piercing parlours, and beauty salons offering waxing and depilatory services. Although registered pharmacists, medical practitioners, acupuncturists, dentists, nurses, physiotherapists, podiatrists or anyone working directly under their supervision may undertake skin piercing or similar risk activities they are typically not required to be registered by the bylaws relying on professional controls of the activities.

³ Ministry of Health, *op cit*, 1998

10. The councils which have bylaws appear to have made these based on section 23 of the Health Act 1956,⁴ although the Dunedin City bylaw also referenced section 684(8) of the Local Government Act 1974 which stated bylaws may be made “conserving public health, wellbeing and safety”. The latter section has since been repealed but section 145 of the Local Government Act 2002 states that a territorial authority may make bylaws for “protecting, promoting, and maintaining public health and safety”. Section 64 (1) (t) of the Health Act 1956 enables bylaws to be made “Prescribing the sanitary precautions to be adopted in respect of any business or trade”. Any such bylaw must be made pursuant to the Local Government Act 2002 but also must be sent to the Medical Officer of Health for submission to the Director-General not less than 28 days before its confirmation. As far as can be determined there has been not empirical evidence to support the need for the bylaws, although in one case it was noted that industry *provided examples of less than desirable practices and misunderstanding of “safe” best practices which could result in the rapid spread of diseases including Hepatitis B and C and HIV.*⁵
11. The bylaws above have no consistency regarding minimum age for procedures with Auckland having 18 for tattooing and piercing; Napier and Dunedin 16 for both tattooing and piercing; and Manukau 16 for piercing and 18 for tattooing. Timaru and Waimate have provisions requiring parents consent for those under 16 years of age. All bylaws require the parent or guardian’s consent for underage procedures. Before seeking the consent of parents or guardians the child must give permission for the parent or guardian to be given the information to protect the child’s privacy rights. It is unlikely a bylaw provision is likely to prevent deception should a person be determined.
12. Both the states of Victoria and New South Wales in Australia, for example, have regulations based on guideline documents very similar in content to those of the New Zealand Ministry of Health ones. In a published journal in 2002 (Environmental Health 2(2) 2002) there were three articles looking at the effectiveness of these regulations. Amongst the findings were that more investment in training of both the regulators and the regulated was needed to improve compliance with the guidelines and that there was little consistency across local authorities in terms of how, when or even if premises were inspected. There is no such data available here but the situation is likely to be somewhat similar. None of the papers were aimed at looking for any reduced incidence of disease as a result of regulation so there appears to be an absence of evidence for registration and inspection actually preventing the transmission of disease.

Conclusions

13. There is on the face of it a potential risk of transmission of infectious disease from such activities with the greatest risk of infection and transmission of communicable diseases arising from tattooing and body piercing rather than waxing and electrolysis. The evidence for risk of transmission of communicable diseases is uncertain and although some operators want formal approval by the Council there is insufficient evidence of actual risk to warrant the development of regulations.
14. A limited number of councils have introduced such bylaws and therefore it is presumed there are not significant risks on a nation-wide basis. It has not been possible to find any references to surveys of the effects of regulation and inspection on preventing the transmission of disease in New Zealand. There is no evidence for actual risk from such practices and certainly there is no evidence of disease transference existing in this area.

⁴ Section 23 of the Health Act 1956 states;

General powers and duties of local authorities in respect of public health

Subject to the provisions of this Act, it shall be the duty of every local authority to improve, promote, and protect public health within its district, and for that purpose every local authority is hereby empowered and directed—

(a) ...

(b) To cause inspection of its district to be regularly made for the purpose of ascertaining if any nuisances, or any conditions likely to be injurious to health or offensive, exist in the district:

(c) If satisfied that any nuisance, or any condition likely to be injurious to health or offensive, exists in the district, to cause all proper steps to be taken to secure the abatement of the nuisance or the removal of the condition:

(d) ...

(e) To make bylaws under and for the purposes of this Act or any other Act authorising the making of bylaws for the protection of [public health]:

(f) ...

⁵ Environmental Hearings Committee, Manukau City Council, 4 March 2008

15. Requiring regulatory controls over premises and equipment could be more simply undertaken than that of ensuring the operations are undertaken in a hygienic-manner. The latter may require concentrated educational activities and more regular inspections.
16. The continuation of the current approach would not require any additional costs in staff time or resources at this time. There would not be any additional compliance costs for the industry but responsibility for compliance with the guidelines remains with the industry.

Options Considered

17. The following options have been considered in regard to this matter.
18. Option 1. Continue with current actions and wait for Government regulation. This could occur with the introduction of the Public Health Act proposed to replace the Health Act 1956. The Bill waits reporting back from a Select Committee.
19. Option 2. Continue activities as in Option 1 but add further information or links to the website and advise premises or operators of the information links by post outs. This could provide the opportunity for improving the level of knowledge amongst the public and operators. There are some costs involved in staff researching and preparing educational material and possibly it is unlikely to change the unknown level of risk.
20. Option 3. Inspect premises undertaking tattooing and skin piercing as a public good using the Ministry of Health Guidelines as the basis for compliance. This would raise the level of knowledge of the state of the premises and how operations are being undertaken. It would involve providing additional funding from rates to support additional staffing for inspection and administrative support, and for developing computer administrative support and educational material. On that basis only the higher risk premises, such as tattooing and skin piercing could be possibly justified. The lower risk activities such as waxing and electrolysis would not be covered.
21. Option 4. Offer a "certificate of compliance" on request, using the Ministry guidelines to assess compliance. A fee for the service could be charged to ensure that additional resourcing as indicated in option 3 above is cost neutral, but this may introduce liability issues if the operations fail to comply with the guidelines. This would not cover all premises necessarily and may not capture the riskiest cases, if any. Potentially there would be less formal record keeping than registration but may be seen to favour certain premises over others. It could cover the range of premises undertaking tattooing, skin piercing, waxing and electrolysis.
22. Option 5. Formulate a bylaw based on the other bylaw examples and the Ministry guidelines as a template if a section 155 analysis shows a need for such. A formal public register can be kept and service fees could be charged to ensure that additional resources as detailed in option 3 above and ongoing enforcement matters are cost neutral. It may not make any impact on communicable disease statistics for the effort involved. It would add compliance costs to some businesses, and some businesses could be licensed multiple times, e.g. hairdressers who are also offering skin piercing and waxing. Costs would be involved in tracking down all the beauty therapists and other premises who offer skin piercing and hair removal techniques such as waxing or electrolysis.

FINANCIAL IMPLICATIONS

23. There could be considerable financial implications of all Options except 1 and 2. Options 3, 4, and 5 require time spent inspecting and examining, a potentially large number of premises and operations.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

24. Issue not considered in the budgets.

LEGAL CONSIDERATIONS

25. Considered in paragraphs 8 and 10 above. If a bylaw was to be considered a section 155 analysis needs to be undertaken.

Have you considered the legal implications of the issue under consideration?

26. Yes – see above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

27. Not provided for in either.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

28. No.

ALIGNMENT WITH STRATEGIES

29. No Strategy associated with the subject.

Do the recommendations align with the Council's strategies?

30. No, no strategies exist

CONSULTATION FULFILMENT

31. Initial consultation with Inspections and Enforcement Unit and Community Public Health.

STAFF RECOMMENDATION

It is recommended that the Council:

Confirm its current stance and practice (Option 1) and reconsider these should the review of the Health Act 1956 (pending) direct local authorities to take a more interventionist approach.