

# **Health Legislation (Restriction on Use of Cosmetic Surgery for Children and Another Measure) Amendment Bill 2008**

## **Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Stephen Robertson MP**

### **Title of the Bill**

Health Legislation (Restriction on Cosmetic Surgery for Children and Another Measure) Amendment Bill 2008

### **Objective of the Amendment**

The objective of the amendment is to ensure the policy intent of the new Chapter 5A of the *Public Health Act 2005* is realised to protect children from risks associated with undergoing higher risk and more invasive cosmetic procedures where it is not considered that these procedures are being performed in the best interests of a child.

The amendments will help to clarify what procedures are considered to be a 'cosmetic procedure' for the purposes of Chapter 5A by enabling a regulation to be made to set out the circumstances under which a procedure may be captured, or excluded, as being a cosmetic procedure for the purposes of chapter 5A.

While some cosmetic procedures may be performed purely for aesthetic reasons, it is recognised that these procedures may also be undertaken to restore function or reconstruct a body part as a result of an abnormality, deformity, illness or trauma.

The amendment will enable greater clarity to be provided about procedures that are performed for purely aesthetic reasons as opposed to those being performed in the best interests of a child to correct a growth or congenital abnormality or the physical effect of a medical condition, illness or trauma.

## **Consistency with Fundamental Legislative Principles**

The amendments do not conflict with Fundamental Legislative Principles.

## **Consultation**

The amendments do not change the policy intent or operation of the provisions. Therefore no community consultation on the amendments was undertaken.

# **Notes on Provisions**

## **Part 2 Amendment of Public Health Act 2005**

Amendments are to be made to Clause 5 of the Bill, which sets out the definition for the term ‘cosmetic procedures’ for the purposes of the new chapter 5A.

As detailed in the Explanatory Notes for the Bill, the definition of the term ‘cosmetic procedure’ lists those procedures which are to be captured by this term for the purposes of chapter 5A as well as providing for other procedures to be prescribed under a regulation to ensure that the list can be updated in response to future developments within the industry.

**Amendment 1** provides for the procedures and the regulation making head of power currently listed under section 213A to be renumbered as subsection (1), as a consequence of the following amendments.

**Amendment 2** provides for a minor amendment to be made to paragraph (1)(i) and a number of new subsections to be incorporated into the definition of the term ‘cosmetic procedure’

Paragraph (1)(i) has been amended to clarify that the regulation making head of power under this paragraph may be used to prescribe additional procedures to be a cosmetic procedure for the purposes of chapter 5A.

New subsection (2) inserts a head of power to enable a regulation to be made to clarify that a procedure is not a cosmetic procedure for the

purposes of chapter 5A. However, subsection (3) requires that prior to recommending that a regulation be made under subsection (2), the Minister must be satisfied that:

- (a) performance of the procedure on a child is unlikely to compromise the health or safety of the child; and
- (b) the procedure is routinely performed with minimal adverse outcomes.

For example, otoplasty, or the surgical pinning back of ‘bat ears’, has not been listed as a cosmetic procedure under section 213A. While this procedure results in a permanent cosmetic change, stakeholders have advised that this procedure is not considered to be higher risk, and is usually most beneficial psychologically for a child when performed at an early age. A regulation could be made to remove any doubt that this procedure is not a cosmetic procedure for the purposes of chapter 5A.

New subsection (4) clarifies that if a regulation is made under subsection (1) or (2) to prescribe a procedure, then the procedure may be prescribed subject to stated conditions or in stated circumstances.

This will ensure that any regulation made can include information about the circumstances under which a procedure is either captured, or excluded, as being a cosmetic procedure for the purposes of chapter 5A. For example, in order to correct a cranio-facial abnormality, a child may be required to undergo a series of medical procedures, including rhinoplasty, reshaping of the chin and the insertion of facial contour implants which are all currently listed as cosmetic procedures under section 213A. Under these circumstances, the legislation would recognize that the procedures are being performed in the best interests of the child. However, in order to remove any doubt a regulation could be made to clarify that this type of surgery is not a cosmetic procedure for the purposes of chapter 5A.