

Passed by both Houses



New South Wales

# Tattoo Parlours Bill 2012

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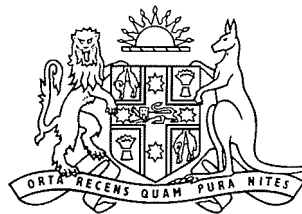
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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2012*



New South Wales

## **Tattoo Parlours Bill 2012**

Act No , 2012

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An Act to provide for the licensing and regulation of body art tattooing businesses and body art tattooists.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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The Legislature of New South Wales enacts:

## Part 1    Preliminary

### 1    Name of Act

This Act is the *Tattoo Parlours Act 2012*.

### 2    Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Part 2 commences on a day or days to be appointed by proclamation.

### 3    Definitions

- (1) In this Act:

***adverse security determination*** made by the Commissioner means:

- (a) in relation to an applicant for a licence—a determination of the Commissioner that is reported to the Director-General under this Act on either or both of the following:
  - (i) that the applicant is not a fit and proper person to be granted the licence,
  - (ii) that it would be contrary to the public interest for the applicant to be granted a licence, or
- (b) in relation to a licensee—a determination of the Commissioner that is reported to the Director-General under this Act on either or both of the following:
  - (i) that the licensee is not a fit and proper person to continue to hold his or her licence,
  - (ii) that it would be contrary to the public interest for the licensee to continue to hold his or her licence.

***approved*** means approved by the Director-General.

***authorised officer*** means any of the following:

- (a) a police officer or any other member of the NSW Police Force,
- (b) an investigator within the meaning of the *Fair Trading Act 1987*,
- (c) any other person (or person belonging to a class of persons) prescribed by the regulations for the purposes of the provision in which the expression is used or generally.

***body art tattooing business*** means a business involving the carrying out of body art tattooing procedures (whether or not in combination with other tattooing procedures or with other activities).

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**body art tattooing procedure** means a tattooing procedure performed for decorative purposes, but does not include a cosmetic tattooing procedure.

**body art tattooist** means an individual who performs body art tattooing procedures.

**business day** means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

**close associate**—see section 4.

**closure order**, in relation to premises, means an order made under section 28 or 29.

**Commissioner** means the Commissioner of Police.

**controlled member** of a declared organisation has the same meaning as in the *Crimes (Criminal Organisations Control) Act 2012*.

**cosmetic tattooing procedure** means any of the following:

- (a) a tattooing procedure performed for the purpose of providing the individual on whom it is performed with an eyeliner, eyebrows or any other make up effect on a permanent basis,
- (b) a tattooing procedure performed by a medical practitioner or for a medical reason (for example, to hide, disguise or correct a medical condition or a post-operative outcome),
- (c) any tattooing procedure performed for any other purpose, or in any other circumstances, prescribed by the regulations.

**Director-General** means:

- (a) the Commissioner for Fair Trading, Department of Finance and Services, or
- (b) if no such position exists—the Director-General of the Department of Finance and Services.

**employ** includes engage under a contract for services or as an apprentice.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**interim closure order**, in relation to premises, means an order made under section 28.

**licence** means a licence under this Act.

**licensed premises**, in relation to an operator licence, means the premises to which the licence relates.

**licensee** means the holder of a licence.

**operator licence**—see section 9.

**serious criminal offence** means an offence committed in New South Wales that is punishable by imprisonment for 2 years or more or an

offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable.

**staff member**, in relation to premises, means an individual employed to work at those premises.

**tattooing procedure** means any procedure involving the making of a permanent mark on or in the skin of a person by means of ink, dye or any other colouring agent.

**tattooist licence**—see section 9.

- (2) The regulations may make provision for or with respect to the circumstances in which the performing of a tattooing procedure is taken (or is not taken) to be for medical reasons for the purposes of paragraph (b) of the definition of **cosmetic tattooing procedure** in subsection (1).
- (3) Notes included in this Act do not form part of this Act.

#### **4 Meaning of “close associate”**

- (1) For the purposes of this Act, a person is a **close associate** of an applicant for a licence or a licensee if the person:
  - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person’s own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) to exercise a significant influence over or with respect to the management or operation of that business, or
  - (b) holds or will hold any relevant position, whether in the person’s own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.
- (2) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.
- (3) The provisions of this section extend to relevant financial interests and relevant powers even if those interests and powers are not payable, exercisable or otherwise enforceable as a matter of law or equity, but are nevertheless payable, exercisable or otherwise enforceable as a matter of fact.
- (4) In this section:

**relevant financial interest**, in relation to a business, means:

  - (a) any share in the capital of the business, or



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- (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or
  - (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of the premises at which the business is carried on to receive rent as lessor of the premises).

**relevant position** means:

- (a) the position of director, manager or secretary, or
- (b) any other position, however designated, if it is an executive position.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

## **5 Relationship of Act to other laws**

Nothing in this Act limits any requirement imposed by or under the *Environmental Planning and Assessment Act 1979*, the *Public Health Act 2010* or any other Act or law with respect to the carrying out of tattooing procedures or the carrying on of body art tattooing businesses.

## **Part 2    Offences relating to unlicensed body art tattooing**

### **6    Body art tattooing businesses to be licensed**

- (1) A person must not carry on a body art tattooing business (whether on the person's own behalf or on behalf of another person) at any premises unless the person is authorised to do so by an operator licence.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
  - (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.
- (2) If a body art tattooing business is carried on (or is proposed to be carried on) at more than one set of premises, a separate operator licence is required to be held by a person for each set of premises for the purposes of subsection (1).
- (3) A person that requires, allows or permits a body art tattooing business to be carried on at premises on the person's behalf in contravention of subsection (1) is guilty of an offence.
- Maximum penalty:
- (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
  - (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.
- (4) Subsection (1) does not apply to a person carrying on a body art tattooing business:
- (a) during the period of 7 business days after the death of a licensee who holds an operator licence for the premises and, if a new application for an operator licence is made during that period, until that application is determined by the Director-General, or
  - (b) during the period of 7 business days after a licensee who holds an operator licence for the premises becomes unable to carry on the business because he or she is incapacitated and, if a new application is made by another person for an operator licence for the premises during that period, until that application is determined by the Director-General, or

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- (c) in such other circumstances as may be prescribed by the regulations.
  - (5) It is a defence in proceedings for an offence against subsection (3) if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that the body art tattooing business was not being carried on under the authority of an operator licence.

## **7 Body art tattooists to be licensed**

- (1) An individual must not perform any body art tattooing procedure for fee or reward unless authorised to do so by a tattooist licence.  
Maximum penalty:
  - (a) for a first offence, 50 penalty units, and
  - (b) for a second or subsequent offence, 100 penalty units.
- (2) Subsection (1) does not apply to an individual who performs a body art tattooing procedure:
  - (a) if the individual carries out the procedure as a self-employed individual at premises for which the individual holds an operator licence, or
  - (b) in such other circumstances as may be prescribed by the regulations.

## **8 Employed body art tattooists to be licensed**

- (1) A person must not employ an individual to work as a body art tattooist unless the individual is the holder of a tattooist licence.  
Maximum penalty:
  - (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
  - (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.
- (2) It is a defence in proceedings for an offence against this section if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that the individual employed to work as a body art tattooist was unlicensed.
- (3) Subsection (1) does not apply to the employment of an individual to work as a body art tattooist in such circumstances as may be prescribed by the regulations.

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## **Part 3    Licensing scheme**

### **Division 1        General**

#### **9    Types of licences and authorisation conferred by licence**

- (1) The following kinds of licence may be granted and held under this Act:
  - (a) an operator licence,
  - (b) a tattooist licence.
- (2) An operator licence authorises the licensee to carry on a body art tattooing business (whether on his or her own behalf or on behalf of another person) at the premises specified in the licence in accordance with this Act and the conditions of the licence.
- (3) A tattooist licence authorises the licensee to perform body art tattooing procedures in accordance with this Act and the conditions of the licence.
- (4) The authorisation conferred by a licence is subject to this Act and the regulations.

#### **10   Licence conditions—general provisions**

- (1) A licence is subject to:
  - (a) such conditions as may be imposed by the Director-General under this Act (whether at the time the licence is granted or at any later time), and
  - (b) such conditions as are imposed by this Act or prescribed by the regulations.
- (2) Subject to subsection (4), the Director-General may impose, vary or revoke conditions on a licence for such reasons, and in such circumstances, as the Director-General considers appropriate or necessary.
- (3) The Director-General may:
  - (a) impose a condition at the time the licence is granted by specifying it on the licence that is issued, and
  - (b) impose, vary or revoke conditions on a licence after it is granted by written notice served on the licensee.
- (4) Nothing in this section authorises the Director-General:
  - (a) to impose a condition that is inconsistent with a condition imposed by this Act or the regulations, or
  - (b) to vary or revoke a condition imposed by this Act or the regulations.

- (5) A licensee must comply with any conditions to which the licence is subject.

Maximum penalty (subsection (5)): 20 penalty units.

## **Division 2      Licence applications and granting of licences**

### **11    Licence applications**

- (1) An application for a licence is to be made to the Director-General.
- (2) An application for a licence may only be made by an individual.  
**Note.** See Part 5A of the *Crimes Act 1900* for offences with respect to the making of false and misleading applications, information and documentation.
- (3) An application for an operator licence in connection with a body art tattooing business that is owned or operated by or on behalf of a corporation, partnership or trust must be made by an individual nominated by the corporation, partners or trustees to be the premises manager for the purposes of carrying on that business at the premises for which the licence is sought.
- (4) An application for a licence may not be made by:
- (a) an individual who is under the age of 18 years, or
  - (b) an individual who is not an Australian citizen or Australian resident, or
  - (c) an individual who is a controlled member of a declared organisation.  
**Note.** Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.
- (5) An application for a licence must:
- (a) be in the approved form and manner, and
  - (b) state the full name and residential address of the applicant, and
  - (c) in the case of an operator licence:
    - (i) specify the address of the proposed licensed premises, and
    - (ii) specify the names and residential addresses of each staff member employed (or, if no staff members are currently employed, proposed to be employed) to work at the proposed licensed premises, and
    - (iii) if the business to which the application relates is owned or operated by or on behalf of a corporation, partnership or trust—be accompanied by evidence in the approved form and manner that the applicant has been nominated by the corporation, partners or trustees to be the premises manager, and

- (d) in the case of a tattooist licence—be accompanied by evidence in the approved form and manner concerning previous, existing or impending employment as a body art tattooist (including employment as an apprentice), and
- (e) be accompanied by the fee prescribed by the regulations and such other information and particulars as may be prescribed by the regulations, and
- (f) comply with such other requirements as may be prescribed by the regulations.

**Note.** See also section 12 for the requirement to provide a statement as to close associates of an applicant for an operator licence.

- (6) If, before an application for a licence is determined by the Director-General, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must within 7 business days of the change give written notice to the Director-General of the particulars of the change.

Maximum penalty (subsection (6)): 20 penalty units.

- (7) Section 12 of the *Criminal Records Act 1991* does not apply in relation to an application for a licence.

## **12 Statement as to close associates of applicant for operator licence**

- (1) An application for an operator licence must be accompanied by a written statement in the approved form, made by the applicant, specifying:
  - (a) that the applicant has made all reasonable inquiries to ascertain the information required to complete the statement, and
  - (b) the following information about any close associates of the applicant:
    - (i) if the associate is an individual—the individual's name and date of birth,
    - (ii) if the associate is a proprietary company—the name and ACN of the company and the names of its directors and shareholders,
    - (iii) if the associate is any other kind of corporation—the name of the corporation, its ACN or ARBN (if any) and the names of the directors or members of its governing body,
    - (iv) if the associate is a partnership—the trading name of the partnership and the names of the partners (including any silent partners),

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- (v) if the associate is a trust—the names of the trustee or trustees and, if a trustee is a proprietary company or other corporation, the information referred to in subparagraphs (ii) and (iii) concerning its management and shareholders.
  - (2) The regulations may provide for exceptions to this section.
  - (3) In this section:  
*ACN*, *ARBN* and *proprietary company* have the same meanings as they have in the *Corporations Act 2001* of the Commonwealth.

### **13 Fingerprinting and palm printing of applicants**

- (1) An applicant for a licence must consent to having his or her fingerprints and palm prints taken by a police officer in order to confirm the applicant's identity.
- (2) The Director-General must refuse to determine an application for a licence if the applicant refuses to be fingerprinted and palm printed.
- (3) Any fingerprints or palm prints obtained from an applicant in accordance with this section who is granted a licence may be used by the Commissioner for any purpose that the Commissioner sees fit.
- (4) A person who formerly held a licence, but is not currently a licensee, may apply to the Commissioner to have any of his or her fingerprints or palm prints obtained in accordance with this section and any copies of them destroyed.
- (5) The Commissioner may grant or refuse an application under subsection (4) as the Commissioner sees fit.
- (6) If an application for a licence is withdrawn or refused, the Commissioner is to ensure that any fingerprints or palm prints that are obtained in accordance with this section, and any copies of them, are destroyed as soon as is practicable after the application is withdrawn or refused.
- (7) As soon as practicable after any fingerprints or palm prints (or any copies of them) are destroyed in accordance with subsection (6), the Commissioner is to notify the applicant in writing that those fingerprints or palm prints (and those copies, if any) have been destroyed.

### **14 Investigations, inquiries and referrals in relation to licence applications**

If the Director-General receives an application for a licence, the Director-General:

- (a) may carry out such investigations and inquiries in relation to the application as the Director-General considers necessary for a proper consideration of the application, and

- (b) is to refer any application that the Director-General considers to have been duly made (along with any supporting information) to the Commissioner for an investigation and determination as to either or both of the following:
  - (i) whether the applicant is a fit and proper person to be granted the licence,
  - (ii) whether it would be contrary to the public interest for the licence to be granted.

**15 Director-General or Commissioner may require further information**

- (1) The Director-General or the Commissioner may, by written notice served on the person concerned, require an applicant for a licence, or a close associate of the applicant, to do one or more of the following things:
  - (a) provide, in accordance with directions in the notice, such information as, in the opinion of the Director-General or the Commissioner, is relevant to the investigation of the application and is specified in the notice,
  - (b) produce, in accordance with directions in the notice, such records as, in the opinion of the Director-General or the Commissioner, are relevant to the investigation of the application and permit examination of the records, the taking of extracts from them and the making of copies of them,
  - (c) authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),
  - (d) furnish to the Director-General or the Commissioner such authorisations and consents as the Director-General or the Commissioner requires for the purpose of enabling the Director-General or the Commissioner to obtain information (including financial and other confidential information) from other persons concerning the applicant and the applicant's associates.
- (2) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.
- (3) The Director-General may refuse to determine an application if a requirement made under this section (whether made by the Director-General or Commissioner) in relation to the application is not complied with.



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**16 Decision of Director-General in relation to licence application**

- (1) The Director-General may, after considering an application for a licence and the determination of the Commissioner under section 14 on the application, grant the licence or refuse to grant the licence.
- (2) The Director-General may, in such circumstances as the Director-General considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Director-General must not grant a licence if:
  - (a) the Director-General is satisfied that the application for the licence was not duly made, or
  - (b) the applicant is a controlled member of a declared organisation, or  
**Note.** Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.
  - (c) an adverse security determination has been made by the Commissioner about the applicant.
- (4) Without limiting subsection (1), the Director-General may refuse to grant an operator licence if the Director-General is satisfied that:
  - (a) a prohibition order under Part 3 of the *Public Health Act 2010* in connection with the carrying out of skin penetration procedures is in force in respect of the proposed licensed premises, or
  - (b) development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A or Part 5.1 of that Act is required) to use the proposed licensed premises for the purposes of carrying on the body art tattooing business and such consent or approval has been refused or has not been granted.
- (5) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (6) A licence confers no right of property and is incapable of being transferred, assigned or mortgaged, charged or otherwise encumbered.  
**Note.** A non-transferable licence is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth. See the definitions of **licence** and **personal property** in section 10 of that Act.
- (7) A licence is granted subject to the condition that the applicant must collect the licence from the place nominated by the Director-General within 60 days of being notified of the grant.

**17    Duration of licence**

- (1) A licence comes into force on the day that it is collected from the place nominated by the Director-General under section 16 (7).
- (2) A licence remains in force for a period of 3 years from the day on which it comes into force, unless sooner surrendered or cancelled or it otherwise ceases to be in force.  
**Note.** A licence may also cease to be in force by operation of section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.
- (3) A licence suspended under this or any other Act is taken not to be in force for the purposes of this Act during the period of the suspension.
- (4) A licence cannot be renewed, but an application for a new licence may be made in accordance with this Act.
- (5) Despite subsection (1), if the applicant for the licence fails to collect the licence in accordance with the condition set out in section 16 (7) the licence does not come into force and is taken to have not been granted.

**18    Form of licence**

A licence is to be in the approved form.

**Division 3      Role of Commissioner**

**19    Commissioner to make security determinations about applicants and licensees**

- (1) If an application for a licence is referred to the Commissioner for investigation under section 14, the Commissioner is to inquire into and determine, and report to the Director-General on, either or both of the following:
  - (a) whether the applicant is a fit and proper person to be granted the licence,
  - (b) whether it would be contrary to the public interest for the licence to be granted.
- (2) The Commissioner may also investigate and determine, whether at the request of the Director-General or on the Commissioner's own initiative, either or both of the following and report to the Director-General on them:
  - (a) whether a licensee continues to be a fit and proper person to hold his or her licence,
  - (b) whether it would be contrary to the public interest for the licensee to continue to hold his or her licence.

- (3) For the purpose of making a determination on a matter referred to in subsection (1) or (2), the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the applicant or licensee (or a close associate of the applicant or licensee) that:
- (a) is relevant to the business or procedures proposed to be carried on or performed, or carried on or performed, under the licence, or
  - (b) causes the Commissioner to conclude that improper conduct is likely to occur if the applicant were granted the licence or the licensee continued to hold the licence, or
  - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the applicant were granted the licence or the licensee continued to hold the licence.

## **20 Disclosure of criminal intelligence information**

- (1) The Commissioner is not, under this or any other Act or law, required to give any reasons for determining a matter under section 19 if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information as referred to in section 19 (3).
- (2) The Director-General is not, under this or any other Act or law, required to give any reasons for not granting a licence to (or for suspending or cancelling a licence of) a person on the basis of an adverse security determination made by the Commissioner about the person if the giving of those reasons would disclose any criminal intelligence report or other criminal information as referred to in section 19 (3).

## **Division 4 Special conditions relating to operator licences**

### **21 Inspection of financial records**

- (1) It is a condition of an operator licence that the licensee must ensure that the requirements of this section concerning the financial records used, received or produced in connection with the carrying on of a body art tattooing business at licensed premises (the *business financial records*) are complied with.
- (2) The business financial records must be made available for inspection by an authorised officer at the place at which they are kept at any reasonable time requested by the officer by written notice served on the licensee.
- (3) An authorised officer inspecting the business financial records must be permitted to take copies of, or take extracts or make notes from, those records.

- (4) In this section:
- financial records*** includes (whether in printed or electronic form):
- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers, and
  - (b) documents of prime entry, and
  - (c) working papers and other documents needed to explain:
    - (i) the methods by which financial statements (such as profit and loss statements, balance sheets and cash flow statements) are made up, and
    - (ii) adjustments to be made in preparing financial statements.

## **22 Change of licence particulars**

- (1) It is a condition of an operator licence that the licensee must give written notice to the Director-General of a change in any of the particulars in respect of a licence (including any change of residential address by the licensee and any change in the particulars relating to the close associates of the licensee), and of the appropriate new particulars, within 14 business days of the change occurring.
- (2) The regulations may make provision for or with respect to the particulars that are (or are not) required to be included in a notice under subsection (1).

## **23 Changes in staff members**

- (1) It is a condition of an operator licence that the licensee must, within 20 business days after a change in staff employment, give written notice to the Director-General of that change.
- (2) There is a ***change in staff employment*** for the purposes of subsection (1) if:
  - (a) a new staff member is employed to work at the licensed premises, or
  - (b) a staff member ceases to be employed to work at the licensed premises.
- (3) The regulations may make provision for or with respect to the changes in staff employment that are (or are not) required to be included in a notice under subsection (1).

## **24 Display of licence information**

It is a condition of an operator licence that the licensee must ensure that:

- (a) a copy of the licence is conspicuously displayed at the licensed premises, and

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- (b) the licence number is included in any advertisement relating to the body art tattooing business carried on at the licensed premises.

## **Division 5      Suspension and cancellation of licences**

### **25      Suspension of licence**

- (1) The Director-General may, if the Director-General is satisfied that there may be grounds for cancelling a licence, suspend the licence by serving the licensee with a written notice:
  - (a) stating that the licence is suspended and (subject to section 20) the reasons for suspending it, and
  - (b) requesting that the person provide the Director-General, within the period specified in the notice (being a period of not less than 14 business days from the date the notice is served), with written reasons as to why the licence should not be cancelled, and
  - (c) stating that the licence will be cancelled unless the person provides the Director-General with sufficient reasons as to why the licence should not be cancelled, and
  - (d) stating the period during which the licence is suspended (being a period of no more than 60 days from the date on which the notice is served).

**Note.** Section 27 of the *Crimes (Criminal Organisations Control) Act 2012* provides for the automatic suspension of a licence if an interim control order is made with respect to a licensee.

- (2) A licensee must return a licence that has been suspended to the Director-General in the period (if any) specified by the Director-General in the notice suspending the licence.  
Maximum penalty: 20 penalty units.

### **26      Cancellation of licence**

- (1) The Director-General must cancel a licence if an adverse security determination is made by the Commissioner about the licensee.

**Note.** Section 27 of the *Crimes (Criminal Organisations Control) Act 2012* provides for the automatic revocation of a licence if an interim control order made with respect to a licensee is confirmed under that Act.
- (2) The Director-General may cancel a licence:
  - (a) if the Director-General is satisfied that the licensee has:
    - (i) supplied information which was (to the licensee's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence, or

- (ii) contravened any provision of this Act or the regulations (whether or not the licensee has been convicted of an offence for the contravention), or
    - (iii) contravened a condition of the licence, or
  - (b) in such other circumstances as may be prescribed by the regulations.
  - (3) Except in the case of a licence that is cancelled because of an adverse security determination made by the Commissioner about the licensee, the Director-General may not cancel a licence without first:
    - (a) suspending the licence, and
    - (b) considering any reasons provided by the licensee under section 25 as to why the licence should not be cancelled.
  - (4) The Director-General may cancel a licence by serving the licensee with a written notice stating that the licence is cancelled and (subject to section 20) the reasons for cancelling it.
  - (5) The cancellation of a licence by such a notice takes effect when the notice is served or on a later date specified in the notice.
  - (6) The Director-General may, by serving a further written notice on the licensee, revoke a notice cancelling a licence before the notice takes effect.
  - (7) A licensee must return a licence that has been cancelled to the Director-General in the period specified by the Director-General in the notice cancelling the licence if the licence has not previously been returned.
- Maximum penalty (subsection (7)): 20 penalty units.

## **Division 6      Review of licensing decisions**

### **27    Right to seek review from Administrative Decisions Tribunal**

- (1) A person (other than a controlled member of a declared organisation) may apply to the Administrative Decisions Tribunal for a review of the following decisions:
  - (a) the refusal or failure by the Director-General to grant a licence to the person (other than by operation of section 17 (5)),
  - (b) a condition imposed by the Director-General on a licence granted to the person,
  - (c) the suspension or cancellation of a licence granted to the person.

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- (2) For the purposes of this section, an application for the grant of a licence is taken to have been refused if the licence is not granted within 60 days after the application is made in accordance with this Act.

**Note.** Under the *Administrative Decisions Tribunal Act 1997*, if the Tribunal has reviewed a “reviewable decision” (such as a decision referred to in subsection (1)), a party to the proceedings may appeal to an Appeal Panel of the Tribunal. An appeal on a question of law may then lie to the Supreme Court.

- (3) If an application for a licence was refused or a licence was suspended or cancelled by the Director-General on the ground of an adverse security determination made by the Commissioner about the applicant for review:

- (a) the Commissioner (as well as the Director-General) is to be a party to any proceedings in the Administrative Decisions Tribunal for a review of the decision of the Director-General, and
- (b) the Tribunal is to be provided with a copy of the report of the Commissioner’s determination, and
- (c) the Tribunal is not prevented from determining whether the Director-General made the correct and preferable decision regarding the application or the licence concerned merely because of the determination of the Commissioner.

- (4) In determining an application for a review of any decision to refuse to grant a licence or to suspend or cancel a licence that was made on the ground of an adverse security determination made by the Commissioner about the applicant for review, the Administrative Decisions Tribunal:

- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information referred to in section 19 (3) without the approval of the Commissioner, and
- (b) in order to prevent the disclosure of any such report or other criminal information, is to receive evidence and hear argument in the absence of the public, the applicant for review, the applicant’s representative and any other interested party, unless the Commissioner approves otherwise.

**Note.** Section 20 of this Act provides that the Director-General and Commissioner are not, under this or any other Act or law, required to give any reasons in connection with the refusal to grant a licence or the suspension or cancellation of a licence on the ground of an adverse security determination made by the Commissioner if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information referred to in section 19 (3). Accordingly, Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* does not apply to any decision to refuse to grant a licence based on such information to the extent that it would require disclosure of the existence or content of any criminal intelligence report or other criminal information.

Clause 27      Tattoo Parlours Bill 2012

Part 3          Licensing scheme

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- (5) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply in relation to a decision referred to in subsection (1).



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## Part 4 Enforcement

### Division 1 Closure orders

#### 28 Interim closure of unlicensed or illegal tattoo parlours

- (1) The Commissioner may make an order that specified premises be closed (an *interim closure order*):
  - (a) if the Commissioner is satisfied that a body art tattooing business is being carried on at those premises without the authority of an operator licence, or
  - (b) if the Commissioner reasonably suspects that any serious criminal offences are being committed at the premises.
- (2) An interim closure order must be served on the person apparently in charge of the premises (if any) or be posted in a conspicuous place at the entrance to the premises.
- (3) An interim closure order takes effect from the time it is so served or posted and has effect for a period of 72 hours, unless sooner repealed or revoked.
- (4) More than one interim closure order closing the same premises may not be made under this section in any period of 7 days.

#### 29 Long term closure of tattoo parlours

- (1) The Local Court may, on the application of the Commissioner, order that specified premises be closed for such period or until such time as the Court considers appropriate if the Court is satisfied that:
  - (a) a body art tattooing business is being carried on at those premises without the authority of an operator licence, or
  - (b) there have been, or there are likely to be, serious criminal offences committed at or in connection with the premises.
- (2) An application may be made under this section regardless of whether an interim closure order is (or has been) in force with respect to the premises.
- (3) If an interim closure order is in force with respect to premises when an application is made under this section, the Local Court may revoke the order if the Court considers that the order should not have been made or that there are no longer sufficient grounds for the order to continue in force.

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**30 Body art tattooing business may not be carried on in closed premises**

- (1) A person must not, while a closure order is in force with respect to premises:

- (a) carry on a body art tattooing business at those premises, or
- (b) work as a body art tattooist at those premises.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
- (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.

- (2) It is a defence in proceedings for an offence against this section if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that a closure order was in force with respect to the premises.

**Division 2 Other enforcement provisions**

**31 Police powers of entry with dog**

A police officer may at any reasonable time enter any licensed premises, or any other premises that the police officer reasonably suspects are being used to perform body art tattooing procedures for fee or reward, for the purpose of:

- (a) carrying out general drug detection (within the meaning of Division 2 of Part 11 of the *Law Enforcement (Powers and Responsibilities) Act 2002*) using a dog, or
- (b) carrying out general firearms or explosives detection (within the meaning of Part 13 of that Act) using a dog.

**32 Production of licences**

A licensee must not, without reasonable excuse, fail to produce his or her licence to an authorised officer on demand by an authorised officer.

Maximum penalty: 20 penalty units.

**33 Hindering or obstruction of authorised officer**

A person must not, without reasonable excuse, hinder or obstruct an authorised officer in the exercise of a function under this Act.

Maximum penalty: 20 penalty units.

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**34 Nature of proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

**35 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.

Clause 35      Tattoo Parlours Bill 2012

Part 4          Enforcement

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- (8)    The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
  - (9)    This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

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## Part 5 Miscellaneous

### 36 Exchange of information

- (1) The Director-General may enter into an arrangement (*an information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging any information that is held by the Director-General or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of the functions of the Director-General or the Commissioner under this Act or the regulations or of the relevant agency concerned.
- (3) Under an information sharing arrangement, the Director-General and the relevant agency are, despite any other Act or law of the State, authorised:
  - (a) to request and receive information that is held by the other party to the arrangement, and
  - (b) to disclose that information to the other party.
- (4) In this section:  
*relevant agency* means any of the following:
  - (a) the NSW Police Force,
  - (b) any Department within the meaning of the *Public Sector Employment and Management Act 2002*,
  - (c) Transport for NSW or Roads and Maritime Services,
  - (d) any local council,
  - (e) any other person or body prescribed by the regulations.

### 37 No compensation payable for exercise of regulatory functions

- (1) No compensation is payable to any person or body for:
  - (a) the closure of premises under this Act, or
  - (b) a refusal to grant a licence under this Act, or
  - (c) the suspension or cancellation of a licence under this Act, or
  - (d) the exercise of any other function in connection with any such closure, refusal, suspension or cancellation.
- (2) Subsection (1) extends to the purported exercise in good faith of any of the functions referred to in that subsection.
- (3) In this section:  
*compensation* includes damages and any other form of monetary compensation.

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**38 Delegations**

- (1) The Director-General may delegate to an authorised delegate any of the Director-General's functions under this Act or the regulations, other than this power of delegation.
- (2) The Commissioner may delegate to an authorised delegate any of the Commissioner's functions under this Act or the regulations, other than this power of delegation.
- (3) A delegate may sub-delegate to another authorised delegate any of the functions delegated by the Director-General or the Commissioner if the delegate is authorised in writing to do so by the Director-General or Commissioner (as the case requires).
- (4) In this section:  
*authorised delegate* means:
  - (a) a police officer or any other member of the NSW Police Force, or
  - (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*, or
  - (c) any person (or any person belonging to a class of persons) prescribed by the regulations.

**39 Giving or service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be given to or served on any person may be given or served:
  - (a) in the case of a natural person:
    - (i) by delivering it to the person personally, or
    - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate:
    - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) by sending it by facsimile transmission to the facsimile number of the body corporate.

- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

#### **40 Provision of documents to Director-General**

- (1) A document may be served on, or given to, or lodged with, the Director-General by leaving it at, or by sending it by post to:
- (a) the office of the Director-General, or
  - (b) if the Director-General has more than one office, any one of the Director-General's offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Director-General in any other manner.

#### **41 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1) or any other provision of this Act concerning the making of regulations, the regulations may make provision for or with respect to the following:
- (a) the conditions of licences,
  - (b) the misuse of licences (including the forgery, alteration, theft or other improper use of licences) and misrepresentations concerning licences,
  - (c) the application of licensing requirements in connection with body art tattooing shows or exhibitions (including the issuing of permits to persons conducting or participating in such shows or exhibitions),
  - (d) methods of service (which may include electronic transmission) for a notice or other document authorised or required to be served by or under a provision of this Act, either in addition to or as an alternative to a method of service provided for by the provision concerned,
  - (e) licence and permit fees (including the waiver, reduction or postponement of such fees),
  - (f) exemptions from the operation of this Act or specified provisions of this Act.

Clause 42            Tattoo Parlours Bill 2012

Part 5                Miscellaneous

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- (3) A regulation may create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation or 20 penalty units in any other case.

**42    Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.



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## **Schedule 1      Savings, transitional and other provisions**

### **Part 1      General**

#### **1      Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) If the regulations so provide, any such provision may:
  - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### **Part 2      Provisions consequent on enactment of this Act**

#### **2      Making of first principal Regulation**

Part 2 of the *Subordinate Legislation Act 1989* is taken to apply to the first regulation made under this Act as if the Minister administering that Act had given a certificate under section 6 (1) (b) of that Act with respect to the regulation.

#### **3      Making of closure orders pending the commencement of section 6**

A closure order may not be made on the ground referred to in section 28 (1) (a) or 29 (1) (a) until section 6 (1) commences.

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## **Schedule 2      Amendment of legislation**

### **2.1      Crimes (Criminal Organisations Control) Act 2012 No 9**

#### **Section 27 Prohibition on carrying on of certain activities when interim control order or control order takes effect**

Insert after paragraph (j) of the definition of *prescribed activity* in section 27 (6):

- (j1) carrying on a body art tattooing business or performing body art tattooing procedures within the meaning of the *Tattoo Parlours Act 2012*,

### **2.2      Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

#### **Section 148 General drug detection with dogs in authorised places**

Insert after section 148 (1) (c):

- (d) persons at, or seeking to enter or leave, any part of premises that the officer is authorised to enter under the *Tattoo Parlours Act 2012* to carry out general drug detection using a dog.

### **2.3      Road Transport (Driver Licensing) Act 1998 No 99**

#### **[1]      Section 39 Photographs to which this Part applies**

Insert at the end of section 39 (d):

- , and
- (e) photographs in the possession of the Authority that were taken or provided for the purposes of applications for the issue of a licence under the *Tattoo Parlours Act 2012*.

#### **[2]      Section 40 Purposes for which photographs may be kept and used**

Insert after section 40 (1) (a) (v):

- (vi) a licence under the *Tattoo Parlours Act 2012*,

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**[3] Section 41 Release of photographs prohibited**

Insert after section 41 (1) (c) (iii):

- (iv) in relation to a licence under the *Tattoo Parlours Act 2012*, or