

TATTOO PARLOURS BILL 2012

PROOF

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Bill introduced on motion by Mr Anthony Roberts, read a first time and printed.

Second Reading

Mr ANTHONY ROBERTS (Lane Cove—Minister for Fair Trading) [3.15 p.m.]: I move:
That this bill be now read a second time.

I am pleased to introduce the Tattoo Parlours Bill 2012. This bill is part of the Government's continued response to gang crime in New South Wales. It follows on from the Crimes Amendment (Consorting and Organised Crime) Act 2012 and the Crimes (Criminal Organisations Control) Act 2012, which the Government brought before this House and the Parliament earlier this year. The Tattoo Parlours Bill 2012 aims to break the stranglehold that outlaw motorcycle gangs have over the tattoo industry in New South Wales. But I note that the bikie problem is not unique to New South Wales, nor is the dominance of bikies in the tattoo industry. I expect other States will be watching New South Wales closely, particularly South Australia and Queensland, which as we have seen recently are no strangers to outlaw motorcycle gang violence. Last weekend a man and a woman were shot in broad daylight in a crowded Gold Coast shopping centre, while a nearby tattoo parlour was the target of a shooting only days before.

Removing bikies from the tattoo industry will reduce the reasons for rival gangs to fight turf wars, because these businesses will no longer be symbols of a gang's territory. The fatal brawl between members of the Comancheros and Hells Angels at the Sydney Domestic Airport Terminal in March 2009 has been linked to the Hells Angels opening a tattoo parlour on what the Comancheros considered was their turf. When tattoo parlours are no longer controlled by bikies they will not be so closely associated with serious acts of violence, such as shootings and fire-bombings. Bikies will no longer feel that they own the industry and that they have the right to stand over, and extort, owners of tattoo businesses who are unaffiliated with outlaw motorcycle gangs. Nor will tattoo parlours be able to provide a means for organised criminals to launder the proceeds of crime. I am advised that currently some parlours even advertise themselves as cash-only businesses. This is highly suspicious, to say the least.

This bill makes good on the Premier's announcement to get bikies out of tattoo parlours. The bill introduces a licensing and regulatory regime for tattoo parlours and tattooists. The bill provides for the Commissioner of Police to conduct investigations into licence applicants and licensees to ensure that only fit and proper persons are granted and able to hold such licences. The bill makes it compulsory for any person currently operating, or wanting to operate a business that offers body art tattooing services, to obtain a licence. I say "body art tattooing" because there are a few different types of tattooing procedures and this scheme does not seek to regulate them all. The bill differentiates between different types of tattooing and regulates what it defines as "body art tattooing". The bill's definition is provided in three parts: tattooing procedures, body art tattooing procedures and cosmetic tattooing procedures. The bill defines a tattooing procedure as:

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.

The bill defines a body art tattooing procedure as:

a tattooing procedure performed for decorative purposes, but does not include a cosmetic tattooing procedure.

The bill defines a cosmetic tattooing procedure as:

(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,

and

(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),

The bill also provides for other cosmetic tattooing procedures to be prescribed by the regulations. This three-part definition allows for the differentiation of body art tattooing from cosmetic tattooing. The bill does not regulate cosmetic or medical tattooing. Businesses that undertake only cosmetic and medical tattooing procedures will not need a licence. Providing that their employees do not carry out body art tattooing, employees of cosmetic and medical tattooists will also not require a licence.

Tattoo parlours, and cosmetic and medical tattooists, are currently subject to regulation under the Public Health Act 1991, the Public Health (Skin Penetration) Regulation 2000 and the Skin Penetration Code of Best Practice. These current regulations, which seek to reduce the health risks associated with tattooing, remain appropriate and do not require amendment at this time. However, they are insufficient to end the criminal penetration of the tattoo industry. The regulatory scheme this bill creates will operate alongside these health-focused regulations, and does not seek to limit their requirements. Nor does it seek to limit any requirements under the Environmental Planning and Assessment Act 1979 which are primarily concerned with the development approval process for tattoo parlours.

The bill creates two classes of licence: an operator licence and a tattooist licence.

Applications for licences will be made to the Commissioner for Fair Trading. An operator licence will authorise the licensee to carry on a body art tattooing business at a specific premises. A tattooist licence will authorise the licensee to perform body art tattooing procedures. Sole operators will require only an operator licence. The bill includes a regulation-making power which will allow for exemptions from these requirements, for example, exempting body art tattooing where it is being undertaken for a body art or trade show exhibition. Only an individual can apply for a licence, even when the individual is applying on behalf of an organisation. Offences and penalties under part 5A of the Crimes Act 1900 will apply in relation to false or misleading applications. A person who is under 18 years, or who is a controlled member of a declared organisation, may not apply for a licence. Controlled members of declared organisations are those persons who are subject to interim

control orders or control orders under the Crimes (Criminal Organisations Control) Act 2012. An applicant must also be an Australian citizen or resident.

I welcome and pay tribute to the Hon. Dr Brian Pezzutti who was a member of Parliament for many years and who continues to serve not only the Australian Army but also the medical profession and the people of New South Wales. Applicants for operator licences must include the following information: the address of the proposed licensed premises, the names and addresses of each staff member employed or proposed to be employed at the premises and specific details on close associates. It will be important to ensure that every licensee is who he or she claims to be; accordingly, an applicant must also consent to having his or her fingerprints and palm prints taken. Former licence holders may apply to the Commissioner of Police to have their fingerprints and palm prints, along with any copies, destroyed and if an application is withdrawn, the Commissioner of Police is to ensure that any fingerprints, palm prints or copies of these are destroyed as soon as is practical.

The bill provides a definition of "close associate". Defining close associates is important to ensure that all persons with a relevant interest in a body art tattooing business are identified. A close associate is someone who will hold a financial interest, or can exercise any power in the applicant's business, and who by virtue of that power will be able to exercise a significant influence over the business. "Close associate" also will include a person who has any relevant position in the business that will be carried on under the authority of the licence. In some cases bikie gangs, who have effective control over a tattoo parlour, have, on paper, no legally enforceable interest in the business. The bill makes it clear that a close associate is someone who can, in fact, direct the business, or receive a financial benefit from it whether or not it is legally enforceable. Applicants for both an operator licence and a tattooist licence must also pay a fee.

It will be an offence for applicants to fail to notify the Commissioner for Fair Trading of a change in the information provided within an application, while that application is still under consideration and before a decision is made. The maximum penalty for this offence will be 20 penalty units. The bill permits the Commissioner for Fair Trading to undertake investigations and inquiries with respect to a licence application and requires him to refer the application to the Commissioner of Police. The Commissioner of Police will determine whether the applicant is a fit and proper person and whether granting the applicant a licence would be in the public interest. Either the Commissioner for Fair Trading or the Commissioner of Police may require a licence applicant or close associate to provide or produce further information or records. Where an applicant fails to provide or produce such information, the Commissioner for Fair Trading may refuse to determine the application.

The Commissioner for Fair Trading may grant, or refuse to grant, a licence, after having considered the report of the Commissioner of Police on whether the applicant is a fit and proper person. The Commissioner for Fair Trading is not permitted to grant a licence if the Commissioner of Police has reported that the applicant is not a fit and proper person or that granting the licence would be contrary to the public interest. The Commissioner for Fair

Trading must also not grant licences where an application has not been duly made or the applicant is a controlled member of a declared organisation. In addition, the Commissioner for Fair Trading may refuse to grant an operator licence in respect of premises where a prohibition order under part 3 of the Public Health Act 2010 is in force in connection with the carrying out of skin penetration procedures, or where development consent is required under the Environmental Planning and Assessment Act 1979 and there is no development consent or approval in force. Both classes of licence will remain in force for three years unless surrendered, suspended or cancelled. Licences cannot be renewed.

Where licences are due to expire, licensees will be required to apply for a new licence if they wish to keep operating their body art tattooing business or working as a body art tattooist. The bill sets out the role of the Commissioner of Police in the scheme. In addition to the role of the Commissioner of Police in the granting of a licence, the Commissioner of Police can undertake inquiries into licensees at his own initiative, or at the request of the Commissioner for Fair Trading. This will be important where police become aware that a licensee is engaging in conduct that might cause the Commissioner of Police to determine that the licensee was not a fit and proper person, or that it would be contrary to the public interest for the licensee to retain a licence.

The bill provides that the Commissioner of Police may consider criminal intelligence or other criminal information in relation to an applicant or licensee or in relation to a close associate of an applicant or licensee. Criminal information and intelligence can include information relevant to the business or procedures to be carried out under the licence, or that gives an indication that some improper conduct could occur if the applicant were granted a licence, or a licensee were permitted to retain a licence. However, it should be made clear that some people currently in the tattoo industry may regularly associate with bkie members unwillingly. For example, they may be forced to pay them protection money. The Commissioner of Police will distinguish between those who have willingly assisted and associated with criminals on the one hand and, on the other, people who are essentially victims of extortion.

The bill also provides protections for criminal intelligence considered by the Commissioner of Police or the Commissioner for Fair Trading. The Commissioner of Police is not required to give any reasons for making a determination and recommendation that an applicant or licensee is not a fit and proper person, or that granting a licence is contrary to the public interest if giving those reasons would disclose criminal intelligence or other criminal information. For the same reasons, the Commissioner for Fair Trading is not required to give any reasons for having acted on such a recommendation by the Commissioner of Police and as a result refused to grant a licence, or suspended or cancelled a licence. In fact, the Commissioner for Fair Trading is obliged to follow the recommendations of the Commissioner of Police on these matters.

The bill makes it an offence to carry on a body art tattooing business without an operator licence. The maximum penalty for this is 100 penalty units in the case of a corporation and 50

penalty units in any other case. However, a continuing offence provision also applies to this requirement, meaning that the penalty will increase by the same amount each day that the offence continues. This is an important provision because it will provide a strong deterrent and recognises the considerable resources that many criminal elements have at their disposal. This offence will not apply during the seven-day period after the death or incapacitation of a licensee who holds an operator licence for the premises and, in either of these cases, if an application for an operator licence is made during the seven-day period, the offence will not apply until that application is determined by the Commissioner for Fair Trading.

Performing any body art tattooing procedure for a fee or reward without a tattooist licence will also be an offence with a maximum penalty of 50 penalty units for a first offence and 100 for second and subsequent offences. The bill also makes it an offence for a body art tattooing business, whether or not that business is licensed, to employ an unlicensed body art tattooist. The maximum penalty for this offence is 100 penalty units for corporations and 50 penalty units in any other case. Again, a continuing offence provision applies in respect of a breach of this requirement, allowing the penalty to increase by the same amount on a daily basis. The bill also creates a defence if the person can satisfy the court that he or she did not know, or could not reasonably have been expected to know, that the body art tattooist he or she employed was unlicensed. Licences will be subject to conditions. The bill sets out a number of these conditions and also makes provision for further conditions to be prescribed in the regulations. It will be an offence to fail to comply with any condition of a licence, with a maximum penalty of 20 penalty units.

One of the Government's aims in introducing this legislation is to ensure that tattoo parlours cannot be used to launder the proceeds of crime. To that end, the bill makes it a condition of an operator licence that the licensee must make certain business financial records available for inspection by an authorised officer at a reasonable time. Licensees will also be required to report on any change of licence particulars within 14 business days of the change occurring. Particulars could include change of the licensees' residential address, or a change in close associates. The regulations may also make provision for other relevant particulars.

To ensure that a business cannot employ unlicensed tattooists in a body art tattoo business, and that all employees are subject to proper scrutiny, it will be a condition of an operator licence that the operator informs the Commissioner of Fair Trading within 20 business days of any change in staff member employment at the licensed premises. A change in staff member employment includes a new staff member commencing employment, or a staff member ceasing employment at the licensed premises. The definition of "staff member" is not limited to licensed tattooists, but to any staff member employed at the licensed premises. Without this definition, there is a risk that, in an attempt to avoid scrutiny by the regulators, the real operator of the premises may be employed there in another capacity, for example, as a bookkeeper or receptionist.

Licensed operators will also be required to conspicuously display a copy of their licence at the licensed premises and it will be required that the licence number be included in any

advertising. The bill also provides for suspension and cancellation of licences in certain circumstances. The Commissioner for Fair Trading may suspend licences for a period of no more than 60 days by serving the licensee with a written notice advising of the reasons for suspension and requesting that the licensee provide, within 14 business days, reasons that the licence should not be suspended. The Commissioner for Fair Trading is to cancel a licence if he receives a report from the Commissioner of Police that the licensee is not a fit and proper person or that it would be contrary to the public interest for the licensee to continue to hold the licence.

As noted earlier, the Commissioner of Police can undertake inquiries into licensees at any time and make a determination regarding the licensee's fitness to retain a licence. The Commissioner for Fair Trading may also cancel a licence where a licensee has: provided false or misleading information in the licence application; contravened any provision of the Act or regulations; or contravened a condition of the licence. The regulations may also provide for other circumstances. The Commissioner for Fair Trading may cancel a licence by serving the licensee with a written notice. The cancellation takes effect when the notice is served, or at a later date specified on the notice.

Except in cases where a licence is cancelled on the recommendation of the Commissioner of Police on fit and proper person or public interest grounds, the licence will first be suspended and the licensee will have an opportunity to provide reasons as to why the licence should not be cancelled, and the Commissioner for Fair Trading will need to consider those reasons. The bill provides that applicants and licensees, other than a controlled member of a declared organisation, have a right of appeal to the Administrative Decisions Tribunal. The following decisions are appealable: refusal or failure to grant a licence; imposition of licence conditions; and suspension or cancellation of a licence.

The bill provides for the protection of criminal information and intelligence in appeals of licensing decisions made on fit and proper person or public interest grounds. In such appeals, the Administrative Decisions Tribunal is to ensure that it does not disclose the existence or content of any criminal intelligence report or other criminal information without the approval of the Commissioner of Police. The Commissioner of Police and the Commissioner for Fair Trading are also to be party to any such appeal proceedings. To help police keep illicit activity out of tattoo businesses, the bill provides for them to enter licensed tattoo parlours, or premises that a police officer reasonably suspects are being used to perform body art tattooing procedures, and use drug and firearm and explosive detection dogs within the premises. Police know that illicit drugs and firearms have been kept at tattoo parlours in the past. In 2010 police seized more than 250 ecstasy tablets, a quantity of other drugs, a loaded .45 calibre pistol and a push dagger knife from an inner west tattoo parlour.

The bill also provides that the Commissioner of Police can direct that a tattoo parlour close for a period of 72 hours if it is operating unlicensed, or if he suspects serious criminal activity is occurring there. The Commissioner of Police may also apply to the Local Court for a long-term closure order on the same grounds. These provisions are similar to those in the Liquor

Act. To carry on business contrary to a closure order will carry a penalty of 100 penalty units for corporations and 50 penalty units in every other case, as will working as a body art tattooist at such premises. The bill also provides for penalties to continue every day that a person keeps operating in closed premises. The bill also provides for authorised officers—police officers and officers of NSW Fair Trading—to issue penalty notices for prescribed offences. Importantly, most provisions of the bill will commence on assent, meaning that the police can use detection dogs as soon as the Act commences.

The bill provides for a transitional period before offences relating to the regulatory scheme commence. This will provide the necessary time for the NSW Police Force, NSW Fair Trading and other relevant agencies to put the nuts and bolts of the scheme in place. It will also allow current business owners and tattooists to apply for and, where appropriate, to be issued with licences under the new regulatory scheme. The bill also provides for a ministerial review of the bill after five years from the date of assent, with the report to be tabled in Parliament within 12 months of the five-year period. This is an important piece of legislation and a bold step for New South Wales. The Government urges other jurisdictions to follow our lead. I commend the bill to the House.

Debate adjourned on motion by Miss Tania Mihailuk and set down as an order of the day for a future day.