

Tattoo Parlours Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to create a licensing and regulatory scheme for the carrying on of body art tattooing businesses and the performing of body art tattooing procedures.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act, except for Part 2 (Offences relating to unlicensed body art tattooing). Part 2 will commence on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. In particular, the following expressions are defined.

The expression ***tattooing procedure*** is defined to mean 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 expression ***body art tattooing procedure*** is defined to mean a tattooing procedure performed for decorative purposes, but not to include a cosmetic tattooing procedure.

The expression ***cosmetic tattooing procedure*** is defined to mean 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.

The expression ***body art tattooing business*** is defined to mean a business involving the carrying out of body art tattooing procedures (whether or not in combination with other tattooing procedures or with other activities).

The expression ***Director-General*** is defined to mean:

- (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.

Clause 4 defines who is a ***close associate*** of an applicant for a licence or licensee under the proposed Act.

Clause 5 provides that nothing in the proposed 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

Clause 6 makes it an offence for:

- (a) a person to 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, or
- (b) a person to require, allow or permit a body art tattooing business to be carried on at premises on the person's behalf in contravention of the requirement referred to in paragraph (a).

The maximum penalty for the offence will be:

- (a) in the case of a corporation—100 penalty units (currently, \$11,000) 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 (currently, \$5,500) and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.

Clause 7 makes it an offence for an individual to perform any body art tattooing procedure for fee or reward unless authorised to do so by a tattooist licence. The maximum penalty for the offence will be a maximum penalty of 50 penalty units in the case of a first offence (currently, \$5,500) and 100 penalty units for a second or subsequent offence (currently, \$11,000).

Clause 8 makes it an offence for a person to employ an individual to work as a body art tattooist unless the individual is the holder of a tattooist licence.

The maximum penalty for the offence will be:

- (a) in the case of a corporation—100 penalty units (currently, \$11,000) 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 (currently, \$5,500) and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.

Part 3 Licensing scheme

Division 1 General

Clause 9 provides that 2 types of licence may be issued under the proposed Act: an operator licence (which authorises the carrying on of a body art tattooing business at a single set of specified premises) and a tattooist licence (which authorises its holder to perform body art tattooing procedures on other individuals).

Clause 10 provides that a licence is subject to such conditions as may be imposed on it by the Director-General or by the proposed Act or the regulations. A failure to comply with a licence condition will be an offence punishable by a maximum penalty of 20 penalty units (currently, \$2,200).

Division 2 Licence applications and granting of licences

Clause 11 provides for licence applications to be made to the Director-General and sets out the procedure (including eligibility requirements) in relation to the making of licence applications. In particular, licence applications may only be made by individuals and not by non-natural persons such as corporations.

Clause 12 requires an applicant for an operator licence to provide a statement with his or her application setting out certain information about the applicant's close associates.

Clause 13 requires an applicant for a licence to consent to being fingerprinted and palm printed as a precondition to having his or her application determined by the Director-General.

Clause 14 authorises the Director-General to conduct investigations and inquiries into licence applications. It also requires the Director-General to refer each duly made licence application to the Commissioner of Police for an investigation, determination and report as to whether the applicant is a fit and proper person to be granted the licence or whether it would be contrary to the public interest for a licence to be granted to the applicant.

Clause 15 enables the Director-General and the Commissioner of Police to require further information to be provided in connection with a licence application.

Clause 16 authorises the Director-General to grant or refuse to grant a licence for which a person has applied. It also sets out the circumstances in which the Director-General must or may refuse to grant a licence.

Clause 17 provides that a licence remains in force for a period of 3 years unless sooner surrendered or cancelled or it otherwise ceases to be in force.

Clause 18 provides that a licence is to be in the form approved by the Director-General.

Division 3 Role of Commissioner

Clause 19 enables the Commissioner of Police to inquire into, determine and report to the Director-General on whether an applicant for a licence is a fit and proper person to be granted the licence or whether it would be contrary to the public interest for a licence to be granted to the applicant. It also enables the Commissioner to determine and report on these matters on a continuing basis with respect to licensees.

Clause 20 ensures that there is no obligation on the Director-General or the Commissioner of Police to give reasons for refusing to grant a licence (or for suspending or cancelling a licence) if to do so would result in the disclosure of any criminal intelligence report or other criminal information.

Division 4 Special conditions relating to operator licences

Clause 21 makes it a condition of an operator licence that the licensee permit the financial records of the body art tattooing business conducted at the licensed premises to be inspected by an authorised officer.

Clause 22 makes it a condition of an operator licence that the licensee notify the Director-General of changes in particulars in connection with the licence.

Clause 23 makes it a condition of an operator licence that the licensee notify the Director-General of changes in the employment of staff members at the licensed premises.

Clause 24 makes it a condition of an operator licence that the licensee ensure that a copy of the licence be conspicuously displayed at the licensed premises and that the licence number be included in advertisements for the business conducted at the premises.

Division 5 Suspension and cancellation of licences

Clause 25 enables the Director-General to suspend a licence if satisfied that there are grounds to cancel the licence. The Director-General must permit the licensee to show cause why the licence should not be cancelled when notifying the licensee of the suspension. A suspension period imposed under the proposed section may not be more than 60 days.

Clause 26 sets out the circumstances in which the Director-General must or may cancel a licence.

Division 6 Review of licensing decisions

Clause 27 enables certain decisions of the Director-General in connection with the refusal to grant a licence, the imposition of licence conditions and the suspension and cancellation of a licence to be reviewed by the Administrative Decisions Tribunal on the application of an applicant for a licence or a licensee (or former licensee).

Part 4 Enforcement

Division 1 Closure orders

Clause 28 enables the Commissioner of Police to make an interim closure order in relation to specified premises:

- (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.

Clause 29 enables the Commissioner of Police to apply to the Local Court for a long term closure order with respect to premises. The Local Court may make such an order if 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.

Clause 30 makes it an offence for a person, while a closure order is in force with respect to premises, to:

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

The maximum penalty for the offence will be:

- (a) in the case of a corporation—100 penalty units (currently, \$11,000) 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 (currently, \$5,500) and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.

Division 2 Other enforcement provisions

Clause 31 enables a police officer to enter at any reasonable time 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.

Clause 32 makes it an offence for a licensee, without reasonable excuse, not to produce his or her licence on demand by an authorised officer. The maximum penalty for the offence will be 20 penalty units (currently, \$2,200).

Clause 33 makes it an offence for a person, without reasonable excuse, to hinder or obstruct an authorised officer in the exercise of a function under the proposed Act.

The maximum penalty for the offence will be 20 penalty units (currently, \$2,200).

Clause 34 provides that proceedings for an offence against the proposed Act or the regulations may be dealt with summarily by the Local Court and the Supreme Court.

The maximum penalty that the Local Court will be permitted to impose for an offence will be 200 penalty units (currently, \$22,000).

Clause 35 enables an authorised officer to issue penalty notices for offences against the proposed Act or the regulations if those offences are prescribed as penalty notice offences by the regulations.

Part 5 Miscellaneous

Clause 36 enables information to be exchanged between agencies for the purposes of assisting in the exercise of functions under the proposed Act.

Clause 37 provides that no compensation is payable for the exercise of certain regulatory functions under the proposed Act.

Clause 38 enables the Director-General and the Commissioner of Police to delegate their functions under the proposed Act to certain persons.

Clause 39 provides for how documents may be served or given to a person for the purposes of the proposed Act.

Clause 40 provides for how notices and other documents may be served on, lodged with or given to the Director-General.

Clause 41 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 42 provides for the review of the proposed Act in 5 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of legislation

Schedule 2.1 amends the *Crimes (Criminal Organisations Control) Act 2012* to provide for the carrying on of a body art tattooing business or performing body art tattooing procedures within the meaning of the proposed Act to be prescribed activities for the purposes of section 27 (Prohibition on carrying on of certain activities when interim control order or control order takes effect) of that Act.

Schedule 2.2 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable police officers to use dogs to carry out general drug detection in connection with persons at, or seeking to enter or leave, any part of premises that police officers are authorised to enter under proposed section 31 of the proposed Act for that purpose.

Schedules 2.3 amends the *Road Transport (Driver Licensing) Act 1998* to facilitate the taking and use of photographs in connection with the granting of licences under the proposed Act and the identification of applicants and licensees.