

PUBLIC HEALTH (INFECTION CONTROL FOR PERSONAL APPEARANCE SERVICES) BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The policy objective of the Bill is to minimise the risk of infection that may result from the provision of hairdressing, beauty therapy and skin penetration services (collectively referred to as “personal appearance services”).

Personal appearance services are currently regulated under Sections 33 and 100A of the *Health Act 1937* and Parts 5 and 15 of the *Health Regulation 1996*.

The current legislation was reviewed under the National Competition Policy (NCP). A Public Benefit Test and a Risk Assessment were undertaken as part of the review. The Risk Assessment found that some personal appearance activities (eg. hairdressing) pose a relatively low risk of infection transmission, while other personal appearance activities (eg. tattooing and body piercing) pose a higher risk of transmission of serious blood-borne diseases (eg. HIV and Hepatitis C).

The Public Benefit Test Report concluded that a two-tiered regulatory model for personal appearance services was the most appropriate method of achieving the legislative objective of minimising infection risks, without unnecessarily restricting competition. This regulatory model, which is incorporated in the Bill, imposes an obligation on all personal appearance services to minimise infection risks to clients but requires only higher risk personal appearance services (eg. tattooing and body piercing) to be licensed.

Means of Achieving Objective

The Bill will replace the existing legislation regulating hairdressing, beauty therapy and skin penetration activities and will establish a framework that:

- requires businesses and individuals providing personal appearance services to take all reasonable precautions and care to minimise infection risks
- requires proprietors of businesses providing higher risk personal appearance services to hold a licence
- requires individuals providing higher risk personal appearance services to hold an infection control qualification
- provides for compliance with the Act to be monitored and enforced.

Personal appearance services

The Bill applies to personal appearance services that are beauty therapy, hairdressing or skin penetration services provided as part of a business transaction. It does not apply to personal appearance services provided in a health-care facility. The Bill provides for the following two types of personal appearance services:

- higher risk personal appearance services; and
- non higher risk personal appearance services.

Higher risk personal appearance services

Higher risk personal appearance services are personal appearance services that involve any of the following skin penetration procedures in which the release of blood or other bodily fluid is an expected result:

- body piercing
- implanting natural or synthetic substances into a person's skin, including, for example, hair or beads
- scarring or cutting a person's skin using a sharp instrument to make a permanent mark, pattern or design
- tattooing
- another skin penetration procedure prescribed under a regulation.

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Non higher risk personal appearance services

Non higher risk personal appearance services are beauty therapy, hairdressing and skin penetration procedures (eg. closed ear or nose piercings) that are not included in the definition of higher risk personal appearance services.

Responsibility for administration and enforcement

Local governments will have the responsibility for the administration and enforcement of the Bill in their respective local government area. Local governments may recover their monitoring costs by charging reasonable fees for licensing and inspections of places of business. This applies to all businesses, whether they provide higher risk personal appearance services or non higher personal appearance services.

Obligation of business proprietors and operators of personal appearance services

The Bill provides that business proprietors and operators of personal appearance services (higher risk and non higher risk) must take all reasonable precautions and care to minimise infection risks to the proprietors' clients. This obligation can be met by following infection control guidelines made by the Minister, or by adopting other measures that minimise infection risks.

Licensing of higher risk personal appearance services

Proprietors of businesses at which higher risk personal appearance services are provided are required to hold a licence.

Before a licence is granted, the local government must be satisfied that:

- the applicant is a suitable person to hold a licence, having regard to matters such as whether the applicant has been convicted of a relevant offence or has had a similar licence or registration suspended or cancelled
- the premises are suitable for the provision of higher risk personal appearance services, having regard to matters such as whether relevant building requirements have been met and that cleaning, waste disposal and sterilising equipment will enable safe infection control practices.

Individuals providing higher risk personal appearance services are required to hold an infection control qualification.

Estimated Cost for Government Implementation

As with the current legislation under which personal appearance services are regulated, the Bill will be administered and enforced by local governments. Therefore, the Bill will not have any significant financial implications for the Queensland Government.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

Defences

Clause 27(3) specifies that sections 23 and 24 of the Criminal Code do not apply to a contravention of a person's obligation under the Act to minimise infection risks. These sections of the Criminal Code require the prosecution to disprove potential excuses of mistakes of fact; acts and omissions that occur independently of the exercise of the will; or an event that occurs by accident. The exclusion of sections 23 and 24 of the Criminal Code is necessary because some matters are inherently within the knowledge of persons with obligations under the Act.

Clause 27(3) balances the exclusion of the Criminal Code provisions by providing that it is a defence to prove that the commission of the offence was due to causes over which the person had no control.

Making of Infection Control Guidelines

Clause 28 authorises the Minister to make guidelines about the matters specified in that clause. The guidelines will be of a complex nature and deal with technical issues (eg. specifications for cleaning of instruments) and will draw upon recognised standards published by the Standards Association of Australia. Therefore, the guidelines could not be easily translated into a legislative format.

As the Minister, rather than the Legislative Assembly, has responsibility for the making of these guidelines, it may be contended that this provision does not have sufficient regard to the institution of the Parliament. However, the Bill specifies that a guideline is of no effect unless the Minister notifies the making of the guideline by notice and that the notice is subordinate legislation as defined by section 9 of the *Statutory Instruments Act 1992*.

As subordinate legislation, a notice made under clause 28 of the Bill is subject to the requirements of section 49 of the *Statutory Instruments Act*

1992, which specifies that subordinate legislation must be tabled in the Legislative Assembly within 14 sitting days after it is notified in the gazette, in order for it to come into effect. The Legislative Assembly will therefore be aware of all guidelines made by the Minister under the Bill. If, for some reason, the Legislative Assembly objects to the substance of a guideline, section 50 of the *Statutory Instruments Act 1992* could be utilised to disallow the notice which notified the making of the guideline. As a consequence of the notice being disallowed, the guideline would cease to have any effect.

Powers of entry

Under clause 79 an authorised person may, without consent or a warrant, enter a premises at which a business proprietor carries on business providing personal appearance services and is open for carrying on business or otherwise open for entry.

A power of entry to licensed premises when the premises are open for business is consistent with other modern licensing legislation. In the case of businesses that provide personal appearance services, the power to enter at any time when the services are being provided is necessary to ensure that the requirements of the Bill are being complied with and that the potential health risks to persons receiving personal appearance services are minimised.

Reasonable excuse for failure to comply with document production requirement

Clause 102 makes it an offence for a person to fail to provide a document to an authorised person unless the person has a reasonable excuse. The provision specifies that non-compliance on the basis of a tendency to incriminate the person is not a reasonable excuse. This provision may be regarded as compromising the person's protection against self-incrimination.

An authorised person's power to require a person to produce a document or make a document available for inspection is limited to documents issued to, or required to be kept by, the person under the Bill, for example, a licence. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person.

Liability of person for conduct of representatives

Clause 141 provides that an act or omission by a person's representative, relating to an offence against the Bill, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. In these circumstances, the person will have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 142 provides that, if a corporation is convicted of an offence against the legislation, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with the relevant provision. The effect of this clause is to presume an executive officer of a corporation to be guilty unless the executive officer can prove that he or she took all reasonable steps to ensure the corporation complied with the provision, or that he or she was not in a position to influence the conduct of the corporation in relation to the offence.

While these provisions effectively provide for the reversal of the onus of proof, it is important to note that the offences provided for under the legislation deal with major public health issues (eg. failure to minimise infection risks for body piercing and tattooing services). Having regard to the object of the legislation, it is appropriate that:

- a person be required to oversee the conduct of his or her representatives and, in doing so, make reasonable efforts to ensure that his or her employees or agents comply with the requirements of the legislation;
- an executive officer who is in a position to influence the conduct of a corporation be required to ensure the corporation complies with the legislation; and
- an executive officer who is responsible for a contravention of the legislation, be accountable for his or her actions and not be able to 'hide' behind the corporation.

The provisions are therefore warranted to ensure that there is effective accountability at a corporate level.

Immunity from civil liability

Clause 145 specifies that the Minister, the chief executive, a local government, an authorised person, or a person acting under the direction of

an authorised person is not civilly liable for an act, or omission, made honestly and without negligence under the Bill.

It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation in good faith. The clause prevents civil liability from being attached to the individual. If the official is the chief executive officer of a local government, an authorised person appointed by a local government, or a person acting under the direction of an authorised person, the liability instead attaches to the local government. If the official is the Minister or the chief executive, the liability attaches to the State. The proposed immunity under this clause does not extend to an official who has been negligent, even though the official may have acted in good faith.

Lapsing of Existing Licences and Registrations

Clauses 151 and 158 provide that existing licences for hairdressing and beauty services, and registrations in relation to skin penetration services that are not higher risk personal appearance services, lapse on the commencement of the new legislation. These services are not required to be licensed under the Bill. As the Bill does not require local governments to refund, on a pro rata basis, the licence fee in respect of any unexpired balance of the licence term, it may be argued that this infringes the rights of the licensees or proprietors of those services.

It is proposed that the new legislation will be proclaimed to commence on 30 June, either in 2004 or 2005, depending on when the Bill is passed. As licences and registrations issued by most local governments expire on 30 June, the issue of refunding fees will not arise for licensees or proprietors in most local government areas.

Regulation-making Power

Clauses 153, 154, 157 and 159 allow a regulation to be made to delay the application of certain provisions of the Bill relating to licences to carry on business providing higher risk personal appearance services. The relevant provisions make it a condition of licence that the business premises must comply with the building standards in Part 15 of the Queensland Development Code. They also allow a local government, when deciding an application for a licence, to take into account whether the premises comply with those building standards. This regulation-making power is included as it may be necessary to allow business proprietors a reasonable period of time after the Act commences, to carry out any necessary upgrading of

their existing premises to ensure they meet the relevant building standards. Whether a regulation is made will depend on when the Act commences.

Clause 161 allows the making of a regulation that may provide for a matter that is necessary to achieve the transition from the *Health Regulation 1996* to the new legislation. Although Part 10 of the Bill deals with all anticipated matters necessary to effect the transition, there may be unforeseen consequences that are not dealt with in the Bill. Given the infection risks associated with personal appearance services, in particular, higher risk personal appearance services, it is imperative that any unintended consequences that may arise during the transition to the new legislation can be dealt with swiftly. The clause would only be used in exceptional circumstances.

Consultation

Extensive consultation has been undertaken in relation to the Bill.

In September 1998, Queensland Health distributed the *Discussion Paper: Review of Hairdressing, Beauty Therapy and Skin Penetration Legislation* to key stakeholders to comment on issues relevant to the review of the current legislation.

In July 2000, the Executive Summary of the Public Benefit Test Report prepared as part of the NCP Review of the current legislation was published for public information.

In September 2001, a consultation paper was distributed to key stakeholders seeking feedback on the development of Infection Control Guidelines, the Building Code provisions relating to premises at which personal appearance services are provided, and issues about the implementation and enforcement of the new legislation.

In February 2003, a consultation draft of the Bill, draft Infection Control Guidelines and draft Building Code provisions were distributed for comment to stakeholders including:

- Local Government Association of Queensland
- Australian Institute of Environmental Health (Queensland Branch)
- Queensland Master Hairdressers Industrial Union of Employees
- Hairdressers Federation of Queensland Union of Employees
- Australasian Federation of Aestheticians and Beauty Therapists

- Liquor, Hospitality & Miscellaneous Workers Union
- Australian Natural Therapies Association
- Advanced Association of Beauty Therapists Australia
- Association of Professional Aestheticians of Australia
- Australian Professional Fingernail Association
- Commerce Queensland
- Professional Tattooing Association of Australia
- Australian Council of Private Education and Training
- Queensland Community Services & Health Industries Training Council
- 10 local governments representing a cross-section of urban, regional and rural areas in Queensland.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Clause 1 sets out the short title of the Act.

Clause 2 provides for the Act to commence on a day fixed by proclamation.

Division 2—Application and purpose of Act

Clause 3 specifies that the Act does not apply to personal appearance services provided in health-care facilities. The term “health-care facility” is defined in the dictionary in Schedule 2 of the Bill.

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Clause 4 specifies that the Act binds all persons. However, this clause provides that the State is bound only by Part 2, Division 1. The effect of this provision is that State facilities providing personal appearance services for a fee will be required to take reasonable steps to minimise infection risks. However, these State facilities will not be subject to the licensing requirements for higher risk personal appearance services or be inspected by local government to monitor compliance with the legislation. An example of a State facility in this category would be a TAFE College at which trainee hairdressers provide hairdressing services to the public.

Clauses 5 and 6 outline the relationship between the Act and a person's civil liabilities or remedies. The effect of these provisions is that a breach of an obligation under the Act, for example under clause 19, would not expose a person to liability under a civil action for breach of statutory duty. However, another civil right or remedy, for example, based on negligence, would not be affected or limited by the Act. Clause 6 also provides that compliance with the Act does not necessarily show that any other civil obligation that exists apart from the Act has been satisfied or has not been breached.

Clause 7 provides that the purpose of the Act is to minimise the risk of infection that may result from the provision of personal appearance services.

Clause 8 outlines how the purpose of the Act is to be achieved.

Division 3—Administration and Enforcement

Clause 9 provides that the administration and enforcement of the Act is a function of local government. A local government is responsible for its local government area.

This clause also provides that a local government may make a resolution or local law that is not inconsistent with the Act. A resolution or local law may be made about the fees payable for providing a service or taking action under the Act but the fee must not be more than the cost to the local government of providing the service or taking the action for which the fee is charged.

Clause 9(3) specifies that if a fee is prescribed under a regulation, the local government cannot make a resolution or local law setting a fee more than the fee prescribed for providing the service or taking the action.

Clause 9(4) and (5) provide the chief executive (of Queensland Health) with a reserve power to do a thing if satisfied that a local government has failed to do the thing in the administration or enforcement of the Act, or the local government and the chief executive agree that the chief executive should do the thing. In the case of the local government's failure to do the thing, the reasonable costs and expenses incurred by the chief executive are a debt payable by the local government to the State. Clause 9(6) allows the chief executive to perform the functions and exercise the powers of a local government, including appointing Queensland Health employees as authorised persons. Clause 9(7) specifies that such appointments may be made before or after an event mentioned in clause 9(4) happens.

Division 4—Interpretation

Clause 10 provides that particular words used in the Bill are defined in the dictionary in Schedule 2 to the Bill (located at the end of the Bill).

Clause 11 defines “beauty therapy”.

Clause 12 defines “body piercing”. It does not include the process of piercing a person's ear or nose with a closed piercing instrument that does not come into contact with the person's skin or mucous membrane and is fitted with a sterilised single-use disposable cartridge containing sterilised jewellery.

Clauses 13 to 18 define the terms “hairdressing”, “higher risk personal appearance services”, “non higher risk personal appearance services”, “personal appearance service”, “skin penetration” and “tattooing”.

PART 2—OBLIGATIONS RELATING TO PERSONAL APPEARANCE SERVICES

Division 1—Obligations to minimise infection risks for personal appearance services

Clause 19 requires a business proprietor to take all reasonable precautions and care to minimise infection risks to their clients. A business

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proprietor must also ensure that operators (ie. individuals) employed by the proprietor take all reasonable precautions and care to minimise infection risks to the proprietor's clients.

An operator also has an obligation to take all reasonable precautions and care to minimise infection risks when providing personal appearance services to a client.

Clause 20 specifies that if a regulation prescribes a way of minimising an infection risk, a business proprietor or operator may discharge their obligation relating to the risk only by following the way prescribed in the regulation. This clause also specifies that, if infection control guidelines made by the Minister state a way of minimising an infection risk, a proprietor or operator may discharge their obligation relating to the risk only by adopting and following the way stated, or by adopting and following another way that minimises the infection risk.

Clause 21 provides that if there is no regulation or infection control guideline stating or prescribing a way to discharge a business proprietor's or operator's obligation in relation to an infection risk, the proprietor or operator may choose an appropriate way to discharge their obligation in relation to the risk. The proprietor or operator must still take all reasonable precautions and care to ensure their obligation to minimise the infection risk is discharged.

Division 2—Further obligations for higher risk personal appearance services

Clause 22 makes it an offence for a person to carry on business providing higher risk personal appearance services unless the person holds a licence.

Clause 23 makes it an offence for a licensee to provide a higher risk personal appearance service from premises unless the premises are stated on the licensee's licence.

Clause 24 makes it an offence for a person to personally provide a higher risk personal appearance service unless the person holds an infection control qualification.

Clause 25 makes it an offence if a business proprietor does not ensure an operator employed or otherwise engaged by the proprietor who provides higher risk personal appearance services holds an infection control qualification.

Division 3—Obligations for non higher risk personal appearance services

Clause 26 makes it an offence for a business proprietor who starts carrying on business providing non higher risk personal appearance services to fail to notify the local government for the area within 30 days of starting to carry on business. This obligation only applies if a local law of the local government requires the proprietor to give the notice. This clause also sets out the particulars that must be stated in the notice and provides that the local government must not charge a fee for a notice given under this clause.

Division 4—Defences

Clause 27 specifies a defence that may be relied upon by a person in proceedings for the offence against clause 19 relating to an infection risk, where the prosecution has proved the person has not adopted or followed the way to minimise the risk stated in an infection control guideline.

This clause also provides that sections 23 and 24 of the Criminal Code do not apply to a contravention of a person's obligation under the Act to minimise infection risks. The effect of this provision is that, in proceedings for an offence against clause 19, the prosecution does not have to prove that a person had an intention to contravene the provision, or was acting under a mistaken belief about something that resulted in the contravention of the Act. The rationale for this provision is discussed in the General Outline section of these Notes.

PART 3—INFECTION CONTROL GUIDELINES

Clause 28 enables the Minister to make infection control guidelines stating ways to minimise infection risks. This clause also provides that an infection control guideline is of no effect unless the Minister notifies the making of the guideline. Although the guideline is not itself subordinate legislation (as defined by section 9 of the *Statutory Instruments Act 1992*),

the clause provides that the notice which notifies the making of the standard is subordinate legislation.

Clause 29 specifies the circumstances in a proceeding under the Act when a document purporting to be an infection control guideline is admissible as evidence of the guideline.

PART 4—LICENCES TO CARRY ON BUSINESS PROVIDING HIGHER RISK PERSONAL APPEARANCE SERVICES

Division 1—Applications for and issue of licences

Clause 30 specifies which local government an application for a licence to provide higher risk personal appearance services is to be made. An application for a licence for fixed premises must be made to the local government for the area in which the premises are located while an application in relation to mobile premises may be made to any local government. This clause also makes it clear that an application for a licence in relation to mobile premises may be made to a local government even though the services are to be, or may be, provided in another local government area.

Clause 31 allows a person to apply for a single licence if the person proposes to carry on business from 2 or more premises. This clause operates subject to clause 30. Therefore, an application for a single licence for 2 or more fixed premises would only be allowed to be made if the premises are located in the same local government area. However, an application for a single licence could be made for 2 or more mobile premises irrespective of which local government area the services are to be provided in.

Clause 32 specifies the matters that must be included in an application for a licence.

Clause 33 specifies that the local government must consider the application and either grant, or refuse to grant, the application.

Clause 34 specifies the criteria of which the local government must be satisfied before an approval is granted.

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Clause 35 sets out the criteria that the local government may consider when deciding whether a person is suitable to hold a licence. *Clause 35(2)* defines certain terms used in the clause. The definition of “relevant offence” includes an offence relating to the provision of higher risk personal appearance services. An example of an offence in this category would be tattooing a child in contravention of section 248 of the *Child Protection Act 1999*.

The suitability criteria set out in this clause may be taken into account by the local government, not only when deciding applications for new licences, but also when deciding applications to renew a licence under clause 44, transfer a licence under clause 49, or when deciding whether a ground exists under clause 51 to suspend or cancel a licence.

Clause 36 specifies the criteria that the local government may consider when deciding whether premises are suitable for providing higher risk personal appearance services.

Clause 37 enables the local government to make inquiries to decide the suitability of an applicant to hold a licence and the suitability of the premises for providing higher risk personal appearance services. This clause also enables the local government to require an applicant to provide further information or documentation the local government reasonably requires to decide the application. If an applicant fails to comply with the requirement, the applicant is taken to have withdrawn the application.

Clause 38 specifies that if the local government decides to grant the application, the local government must issue the licence and advise the applicant where a copy of the infection control guidelines may be obtained. The local government must give an information notice to the applicant if the local government decides to impose conditions or decides to refuse to grant the application.

Clause 39 provides that, if the local government fails to decide an application for a licence within the specified timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the local government if the application is refused under this clause.

Clause 40 specifies a licence becomes effective on the day of its issue or renewal and remains in force until 3 years after that day or until an earlier day stated in the licence. The local government may decide the earlier date.

Clause 41 specifies the standard conditions of a licence. *Clause 41(2)* also allows the local government to impose additional conditions on a licence if the local government considers this is necessary to minimise the

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infection risk associated with the provision of higher risk personal appearance services under the licence. Clause 41(3) requires that the licensee must be given an information notice if additional conditions are imposed under clause 41(2)(b).

Clause 42 makes it an offence for a licensee to contravene a condition of the licence. This clause also clarifies that the penalty may be imposed whether or not the licence is cancelled or suspended because of the contravention.

Clause 43 provides that the licence must be in the approved form and sets out the particulars that must be stated in the licence.

Division 2—Renewal of licences

Clause 44 enables a licensee to apply to the local government who issued a licence to renew the licence. The local government must consider the application and either renew or refuse to renew the licence. This clause also specifies the criteria in respect of which the local government may have regard when deciding whether to grant the application. An information notice must be given to the licensee if the local government decides either to refuse to renew the licence.

Clause 45 enables the local government to require a licensee who has applied for the renewal of a licence to provide further information or documentation the local government reasonably considers is needed to decide the application. If the licensee fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 46 specifies that if a licensee applies for a renewal under clause 44, the licence remains in force until the end of the licence term, until the application is decided under section 44 (ie the licence is renewed or refused to be renewed) or the day the application is withdrawn under section 45(2).

Division 3—Amendment of licences

Clause 47 specifies that a licensee may apply to the local government to amend a licence. The application must comply with the requirements in clause 58. This clause specifies that the local government may amend a licence by changing the location of the premises or adding additional premises. Clause 47(5) specifies that, if the application relates to the

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premises covered by the licence, the local government must be satisfied on reasonable grounds that the premises comply with the requirements of the Act (eg. they are suitable for providing the higher risk personal appearance services having regard to the matters in clause 36).

This clause also provides that the local government must consider the application and either grant or refuse the application. An information notice must be given to the licensee if the local government decides to refuse to amend the licence.

Clause 48 enables the local government to require a licensee who has applied to amend a licence to provide further information or documentation the local government reasonably considers is needed to decide the application. If the licensee fails to comply with the requirement, the application is taken to have been withdrawn.

Division 4—Transfer of licences

Clause 49 specifies that a licensee may apply to the local government to transfer a licence. The application must comply with the requirements in clause 58. The local government must be satisfied that the proposed transferee is a suitable person to hold a licence and the premises are suitable for providing the higher risk personal appearance service. In deciding whether the transferee is a suitable person and the premises are suitable to provide the services, the local government may have regard to the matters in clauses 35 and 36.

This clause also provides that the local government must consider the application and either grant or refuse the application. An information notice must be given to the licensee if the local government decides to refuse to amend the licence.

Clause 50 enables the local government to require a licensee who has applied to amend a licence to provide further information or documentation the local government reasonably considers is needed to decide the application. If the licensee fails to comply with the requirement, the application is taken to have been withdrawn.

Division 5—Suspension or cancellation of licences

Clause 51 sets out the grounds for suspending or cancelling a licence.

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Clause 52 provides that the local government must give a show cause notice to a licensee if the local government believes a ground exists to suspend or cancel the licence and:

- the licensee has not been given, and it is not intended to give the licensee, a remedial notice about the matter to which the ground relates; or
- the licensee has been given a remedial notice and has failed, without a reasonable excuse, to comply with the notice.

Clause 52(3) and (4) sets out the particulars that a show cause notice must contain and specify that the show cause period must be at least 21 days from the giving of the notice.

Clause 53 provides that the licensee may make representations about the show cause notice to the local government and that the local government must consider all written representations.

Clause 54 enables the local government to end the show cause process after considering the accepted representations made by the licensee under clause 53. The local government must give a notice to the licensee of the decision to take no further action about the show cause notice.

Clause 55 provides that after considering any accepted representations made by the licensee under clause 53, the local government still believes a ground exists to suspend or cancel the licence, the local government may suspend or cancel the licence in accordance with the proposed action stated in the show cause notice. This clause applies also to a situation where there are no accepted representations by the licensee under clause 53.

The clause also provides that, if the local government decides to suspend or cancel the licence, it must immediately give an information notice for the decision to the licensee.

Clause 56 sets out the grounds and procedures for the immediate suspension or cancellation of a licence.

Clause 57 makes it an offence for the licensee not to return a licence to the local government within 7 days after receiving an information notice that the licence has been cancelled or suspended, unless the licensee has a reasonable excuse.

Division 6—Other provisions about licences

Clause 58 specifies the requirements for applications for a licence, renewal of a licence, amendment of a licence and transfer of a licence.

Clause 59 provides that if a licence is issued jointly to more than 1 person, a reference in the Act to a licensee is a reference to each of the persons.

Clause 60 enables a licensee to surrender a licence by notice, accompanied by the licence, to the local government that issued the licence.

Clause 61 provides that a licensee may apply for a replacement licence if the licence has been damaged, destroyed, lost or stolen and sets out the requirements of the replacement application.

Clause 62 enables the local government to replace a licence if the local government is satisfied the licence has been lost, stolen destroyed or damaged. This clause also outlines the action the local government must take upon receipt of an application.

Clause 63 makes it an offence for a person to state, for an application made under Part 4, anything that the person knows is false or misleading in a material particular.

Clause 64 makes it an offence for a person to give, for an application made under Part 4, a document containing information that the person knows is false or misleading in a material particular.

**PART 5—MOBILE HIGHER RISK PERSONAL
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Clause 65 sets out the notification requirements for a licensee of mobile premises who intends to provide higher risk personal appearance services in a local government area that is not the local government area that issued the licensee's licence.

Clause 66 specifies that while a licensee is providing higher risk personal appearance services from mobile premises in a second local

government area, the licensee has the obligations under the licensee's licence.

Clause 67 outlines the action the second local government may take while a licensee is providing higher risk personal appearance services from mobile premises in its area. The second local government has the same powers as the first local government would have had if the services were being provided in its area but may not cancel, suspend, impose conditions on, or take any other action in relation to the licensee's licence. Examples of action the second local government could take are prosecuting for an offence or issuing a remedial notice under clause 111.

Clause 68 allows a second local government to advise the first local government if it considers that a thing done or omitted to be done by a licensee or operator employed by the licensee is a contravention of the conditions of the licensee's licence.

Clause 69 deals with the situation where the first local government advises the second local government that a licensee or an operator employed by the licensee has done or omitted to do a thing whilst in the second local government area. This clause specifies that in these circumstances the first local government may take action as if the thing had been done or omitted to be done in its area.

PART 6—INVESTIGATION AND ENFORCEMENT

Division 1—Authorised persons

Clause 70 enables the local government to appoint as an authorised person, an employee of the local government or of another local government (with the consent of the other local government) or a person contracted to the local government. The local government must be satisfied the person has the necessary expertise or experience to be an authorised person.

Clause 71 limits an authorised person to exercising powers only in the local government area for which the person is appointed.

Clause 72 specifies that an authorised person holds office on the conditions stated in their instrument of appointment or a signed notice

given to the authorised person by the local government. The powers of an authorised person may be limited by the instrument of appointment or the signed notice.

Clause 73 specifies the functions of an authorised person.

Clause 74 requires the local government to provide each authorised person with an identity card containing a recent photograph of the person and other specified particulars.

Clause 75 requires an authorised person to first produce or display the authorised person's identity card before exercising any powers under the Act. However, provision is also made for the authorised person to produce the card at the first reasonable opportunity where it is not immediately practical to do so.

Clause 76 specifies that an authorised person ceases to hold office if:

- the term for which the authorised person has been appointed ends;
- the person ceases to hold office under another condition of office;
- the authorised person resigns under clause 77.

Clause 77 provides that an authorised person may resign by notice to the local government.

Clause 78 makes it an offence if a person who ceases to be an authorised person does not return their identity card to the local government within 21 days after the cessation, unless they have a reasonable excuse.

Division 2—Powers of authorised persons

Clause 79 confers on an authorised person a right to enter a place without the occupier's consent or a warrant if the place is:

- a public place and entry is made when it is open to the public; or
- premises at which a business proprietor carries on business providing personal appearance services and the entry is made when the premises are open for business or otherwise open for entry.

The provision also specifies that the authority to enter premises open for carrying on business or otherwise open for entry does not apply to premises that are part of the place where a person resides.

Clause 80 outlines the procedures an authorised person must follow when seeking consent to enter a place. This clause also provides that, should the issue arise in a proceeding whether the occupier consented to the entry and an acknowledgement of consent is not produced in evidence, the onus of proof to prove the entry was lawful lies with the person relying on the lawfulness of the entry.

Clause 81 makes provision for an authorised person to apply to a magistrate for a warrant to enter a place. Under this provision, a magistrate may refuse to consider an application until an authorised person provides the magistrate with the information the magistrate requires.

Clause 82 sets out the grounds that a magistrate must be satisfied of before issuing a warrant and specifies the information that must be stated in the warrant.

Clause 83 makes provision for an authorised person to apply for a warrant by phone, fax, radio or another form of communication because of urgent or other special circumstances.

Clause 84 outlines the procedures that must be followed by an authorised person prior to entering a place under a warrant.

Clause 85 allows an authorised person to ask or signal a person in charge of a motor vehicle to stop the vehicle if the authorised person suspects on reasonable grounds, or is aware, that a thing in or on the vehicle may provide evidence of the commission of an offence against the Act.

Clause 85(3) and (4) require authorised persons exercising powers under this clause to identify themselves and produce their identity card immediately the vehicle is stopped. Clause 85(5) and (6) make it an offence to fail to comply with an authorised person's request or signal without a reasonable excuse and specify that it is a reasonable excuse if obeying the request or signal would have endangered the person or someone else, and the person obeys the request or signal as soon as it is practicable to do so.

Clause 85(7) allows an authorised person to give directions that a stationary vehicle not be moved, or be moved and kept at a stated reasonable place. Clause 85(9) makes it an offence to fail to comply with a direction without a reasonable excuse.

Clause 86 specifies what powers are available to an authorised person who has entered a place under clause 79 for the purposes of monitoring and enforcing compliance with the Act.

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Clause 87 makes it an offence for a person to fail to help an authorised person if requested under clause 86(3)(f), unless the person has a reasonable excuse.

Clause 88 makes it an offence for a person to fail to provide an authorised person with information requested under clause 86(3)(g), unless the person has a reasonable excuse.

Clause 89 provides an authorised person with the power to seize a thing at a place entered, without consent or a warrant, if the authorised person reasonably believes that the thing is evidence of an offence.

Clause 90 provides an authorised person with the power to seize a thing at a place if the authorised person:

- obtained the necessary consent to enter the place; and the authorised person reasonably believes that the thing is evidence of an offence against the Act; and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent; or
- enters the place with a warrant and seizes evidence for which the warrant was issued; or
- reasonably believes another thing at the place is evidence of an offence against the Act and needs to be seized to secure evidence or to prevent repeat offences; or has just been used in committing an offence against the Act.

Clause 91 enables an authorised person to take action in relation to a thing which has been seized by either moving the thing from the place where it was seized or leaving the thing at the place of seizure but restrict access to it.

Clause 92 makes it an offence for a person to interfere, or attempt to interfere, with those actions taken by an authorised person to restrict access to seized things without an authorised person's consent.

Clause 93 makes provision for an authorised person to require the person in control of a thing to be seized to take it to a stated reasonable place by a stated reasonable time; and if necessary, to remain in control of it at the stated place for a reasonable time. It is an offence for a person to fail to comply with a requirement or further requirement made under this clause unless the person has a reasonable excuse.

This clause also provides that the cost of complying with a requirement or further requirement made by an authorised person to the person in

control of a thing to be seized, is to be borne by the person the requirement is made to. However, if a compensation order is made under clause 114 for loss or expense incurred because of the exercise of power, the person to whom the requirement is made will not bear the costs of complying with the requirement.

Clause 94 specifies that an authorised person who has required a person under clause 93 to take a thing to a place may require the person to return the thing to its original place. It is an offence for a person not to comply with the requirement to return the thing to its original place.

This clause also provides that the cost of complying with a requirement under this clause must be borne by the person the requirement is made to. However, if a compensation order is made under clause 114 for loss or expense incurred because of the exercise of power, the person to whom the requirement is made will not bear the costs of complying with the requirement.

Clause 95 requires an authorised person to issue a receipt for a seized thing to the person from whom the thing was seized. However, if this proves impractical, the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Clause 96 sets out the circumstances in which a seized thing will be forfeited to the local government for whom the person was acting, for example if the owner cannot be found after making reasonable inquiries, or if it cannot be returned to its owner, after making reasonable efforts.

Clause 97 specifies when an authorised person must return a seized thing to its owner, if the thing has not been forfeited.

Clause 98 provides for the owner of any seized thing to have access to it for inspection or copying (if a document) until it is forfeited or returned.

Clause 99 enables an authorised person, if an offence has or appears to have been committed against the Act, to require the person to state the person's name and residential address, and to produce evidence of the correctness of the stated name or address. When making such a requirement, the authorised person must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

Clause 100 makes it an offence to fail to comply with a request made under clause 99, unless the person has a reasonable excuse. However, a person does not commit an offence against this clause by not complying

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with such a request if it is not proved that the person committed the offence against the Act that was suspected by the authorised person.

Clause 101 makes provision for an authorised person to:

- require a person to produce a document for their inspection which has been issued to the person under the Act, or is required to be kept by the person under the Act;
- require a person to certify that a copy of the document or an entry in a document is a true copy; and
- keep a document until such time as a copy of the document or entry in a document is certified as a true copy.

Clause 102 makes it an offence for a person to fail to comply with a request to produce a document under section 101, unless the person has a reasonable excuse. It is not a reasonable excuse not to comply with the request on the basis that complying might tend to incriminate the person. The rationale for this is discussed in the General Outline section of these Notes.

Clause 103 makes it an offence for a person to fail to comply with a request to certify a document under section 101, unless the person has a reasonable excuse.

Clause 104 enables an authorised person to require a person to give information to the authorised person about an offence against the Act. It is an offence for a person to fail to comply with such a request, unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the request to give information on the basis that complying might tend to incriminate the person.

Division 3—Monitoring compliance

Clause 105 specifies that local governments may monitor compliance with the Act by having authorised persons inspect places of business in the local government's area. This clause also allows local governments to charge business proprietors reasonable fees for inspections carried out.

Clause 106 specifies the number of inspections that a local government may charge for in any 12 month period for fixed and mobile premises at which higher risk personal appearance services are provided.

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Clause 107 specifies the number of inspections that a local government may charge for in any 12 month period for fixed premises at which non higher risk personal appearance services are provided.

Clause 108 specifies the number of inspections that a local government may charge for in any 12 month period for places that are not fixed premises at which non higher risk personal appearance services are provided.

Clause 109 specifies the number of inspections that a local government may charge for in any 12 month period for both fixed premises and places that are not fixed premises at which non higher risk personal appearance services are provided.

Clause 110 provides that, if an authorised person has given a remedial notice (referred to in clause 111), the relevant local government may charge an inspection fee for checking if the remedial notice has been complied with, in addition to any fee charged under clauses 106 to 109.

Clause 111 enables an authorised person to give a remedial notice to a business proprietor if the authorised person reasonably believes that:

- the proprietor or an operator employed by the proprietor is contravening a provision of the Act or has contravened same in circumstances that make it likely that the contravention would continue or be repeated; and
- the matter is capable of being rectified and it is appropriate to give the proprietor an opportunity to rectify the matter; and
- if the proprietor is a licensee, a local government has not given a show cause notice to the proprietor under clause 52.

This clause also specifies the matters the notice must state and make it an offence to fail to comply with a notice without a reasonable excuse.

A remedial notice might be given, for example, if premises at which higher risk personal appearance services are being provided are not equipped with appropriate sterilising equipment. The notice might require the proprietor to immediately cease providing the services and to install appropriate sterilising equipment within a stated period.

Clause 112 specifies that, if a person is convicted of an offence against the Act, the court may make an order:

- prohibiting the person from providing, carrying on, managing, or having a financial interest in, a business providing a personal appearance service, or

- if the person is a corporation, prohibiting the executive officer of the corporation, who was in a position to influence the conduct of the corporation in relation to the offence, from managing a corporation carrying on business providing personal appearance services

Division 4—General enforcement matters

Clause 113 requires an authorised person to give notice if property is damaged by an authorised person when exercising or purporting to exercise a power, or by a person acting under the direction or authority of an authorised person. The notice must set out the particulars of the damage and be given to the person who appears to be the owner of the property. However, if for some reason this proves impractical, the authorised person must leave the notice in a conspicuous position and in a secure way.

Clause 114 makes provision for a person to be compensated by a local government, where the person has incurred loss or expense because of the exercise or purported exercise of a power by an authorised person under the following subdivisions of Division 2 of Part 6:

- Subdivision 1 – Entry of places
- Subdivision 3 – Powers after entry
- Subdivision 4 – Power to seized evidence

Clause 115 makes it an offence for a person to state anything to an authorised person that the person knows is false or misleading in a material particular.

Clause 116 makes it an offence to give an authorised person a document containing information that the person knows is false or misleading in a material particular.

Clause 117 makes it an offence to obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Clause 118 makes it an offence to impersonate an authorised person.

PART 7—REVIEWS AND APPEALS

Division 1—Internal review of decisions

Clause 119 specifies that a person who is given, or is entitled to be given, an information notice under Part 4 may appeal against the original decision. This clause also specifies that the appeal must be, in the first instance, by way of application for internal review under clause 120.

Clause 120 specifies that an application for review of an original decision is to be made to the local government that gave, or should have given, the person an information notice.

Clause 121 sets out the process and time-frames for the lodgment of an application for the review of an original decision made by the local government.

Clause 122 enables a local government to make a further decision in relation to a matter under review to confirm the original decision, amend the original decision or substitute another decision for the original decision. This clause also provides that if the local government does not notify an applicant within 40 days of the local government's decision, the original decision is taken to have been confirmed.

Clause 123 makes provision for a Magistrates Court to stay the operation of an original decision, if an application has been lodged for the review of the original decision.

Division 2—Appeals

Clause 124 enables a person to appeal to a Magistrates Court where the person is dissatisfied with the decision made by the local government in relation to the review of the original decision.

Clause 125 specifies that any appeal must be made to the Magistrates Court in the local government area of the local government that made the original decision.

Clause 126 sets out the notification requirements and time-frames for an appeal to the Magistrates Court.

Clause 127 allows the Magistrates Court to stay the operation of a decision made by the local government under clause 122, where an appeal has been made to the Court regarding the decision.

Clause 128 specifies the powers that the Magistrates Court has in deciding an appeal and provides that an appeal is by way of rehearing.

Clause 129 sets out the powers that a Magistrates Court may exercise in deciding an appeal.

Clause 130 provides that a person may appeal against a decision of a Magistrate Court to the District Court, but only on a question of law.

PART 8—LEGAL PROCEEDINGS

Division 1—Application

Clause 131 specifies that Part 8 applies to a proceeding under the Act.

Division 2—Evidence

Clauses 132 to 134 specify those matters that do not have to be proved in a proceeding under the Act, or which are considered to be evidence of those matters.

Division 3—Proceedings

Clause 135 provides for offences under the Act to be dealt with as summary offences and specifies the period within which proceedings for an offence can be commenced.

Clause 136 provides that a charge for an offence involving false or misleading information or documents may state ‘false or misleading’ without specifying which is being relied upon.

Clause 137 enables a court on application by a local government to order a person who is convicted of an offence against the Act to pay an amount

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equal to the costs incurred during an investigation of the offence. The payment must be made to the local government that incurred the costs.

Clause 138 clarifies that an application to a court under clause 137 for the recovery of costs of an investigation of an offence against the Act is in the court's civil jurisdiction. This clause also clarifies that onus of proof is on the balance of probabilities.

Clause 139 makes provision for a court to order, on convicting a person for an offence against the Act, the forfeiture to a local government of anything that has been seized.

Clause 140 provides that a thing forfeited to a local government becomes the property of the government. The clause also enables the local government to deal with the forfeited thing, as the local government considers appropriate, including the destruction of the thing.

Clause 141 specifies that an action or omission of a person's representative, in relation to an offence against the Act, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. However, the person can utilise the defence provided for under this provision and prove that they could not, by exercise of reasonable diligence, have prevented the act or omission. The rationale for this provision is discussed in the General Outline section of these Notes.

Clause 142 places an obligation on the executive officers of a corporation to ensure that the corporation complies with the legislation. As such, this provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with the provision; or were not in a position to influence the conduct of the corporation in relation to the offence. The rationale for this provision is discussed in the General Outline section of these Notes.

Clause 143 provides that where a local government prosecutes an offence under the Act, any fines ordered by the court must be paid to the local government.

PART 9—MISCELLANEOUS

Clause 144 sets out the process for service of documents.

Clause 145 specifies that those persons who have a role in the administration of the Act are not civilly liable for an act done, or omission made, honestly and without negligence under the Act. Liability for the chief executive officer of a local government, an authorised person, or a person acting under the direction of an authorised person, attaches to the local government. In any other case, liability attaches to the State.

Clause 146 specifies the chief executive's power of delegation in relation to the chief executive's powers under the Act.

Clause 147 authorises a local government to approve forms for use under the Act.

Clause 148 provides that the Governor in Council may make regulations under the Act and specifies the matters about which a regulation may be made.

PART 10—TRANSITIONAL

Clause 149 defines certain terms used in Part 10.

Clause 150 provides that applications for a licence, renewal of a licence or transfer of a licence made under Part 5 of the former regulation (ie *Health Regulation 1996*) lapse when the Act commences. This clause also specifies that the fee paid by an applicant to a local government for the application is to be refunded in full.

Clause 151 provides that existing licences under Part 5 of the former regulation lapse on the commencement of the Act.

Clause 152 provides that if the licence under Part 5 of the former regulation lapses under clause 151, a notice to show cause why a notice should not be given to cancel or suspend a licence also lapses.

Clause 153 provides that a pending application for registration of an establishment under Part 15 of the former regulation is taken to be an application for a licence under the Act, if the services to be provided are higher risk personal appearance services.

Clause 153(4) and (5) allow a regulation to delay the application of clause 36(a)(ii) to licence applications referred to in clause 153 until a stated date not more than 1 year after the commencement of the Act. Clause 36(a)(ii) allows a local government, when deciding a licence application, to take into account whether the premises comply with the building requirements in Part 15 of the Queensland Development Code. The rationale for these provisions is discussed in the General Outline section of these Notes.

Clause 153(6) specifies that if the services to be provided at the premises are not higher risk personal appearance services, the application lapses and the application fee must be refunded in full to the applicant by the local government.

Clause 154 provides that a pending application for renewal of registration of an establishment under Part 15 of the former regulation is taken to be an application for renewal of a licence under the Act, if the services to be provided are higher risk personal appearance services.

Clause 154(4) and (5) allow a regulation to delay the application of clause 36(a)(ii) to licence renewal applications referred to in clause 154 until a stated date not more than 1 year after the commencement of the Act. The rationale for these provisions is the same as that for clause 153(4) and (5).

Clause 154(6) specifies that if the services to be provided at the premises are not higher risk personal appearance services, the application lapses and the application fee must be refunded in full to the applicant by the local government.

Clause 155 enables a local government to issue a single licence to cover 2 or more premises where the local government has received applications for registration or renewal of registration of 2 or more premises and higher risk personal appearance services are to be provided from the premises.

Clause 156 provides that on commencement of the Act the registration of an establishment under the former regulation is taken to be a licence under the Act. The continued licence will be in force until the end of the period of registration under the former regulation. This provision also provides for the continuation of the suspension of a registration issued under Part 15 of the former regulation.

Clause 157 specifies that the Act applies to a continued licence until the end of the period of registration under Part 15 of the former regulation.

Clause 157(2) and (3) allow a regulation to delay the application of clause 41(1)(b)(iii) and (iv) to continued licences until a stated date not more than 1 year after the commencement of the Act. Clause 41(1)(b)(iii) and (iv) make it a condition of licence that premises at which higher risk personal appearance services are provided must comply with the building requirements in Part 15 of the Queensland Development Code.

Clause 157(5) to (7) allow a regulation to delay the application of clause 36(a)(ii) to applications for renewal of continued licences until a stated date not more than 1 year after the commencement of the Act. The rationale for clause 157(2) and (3) and 157(5) to (7) is discussed in the General Outline section of these Notes.

Clause 158 provides that existing registrations of premises under Part 15 of the former regulation lapse on the commencement of the Act if the services being carried on at the premises are not higher risk personal appearance services, for example, closed ear and nose piercing.

Clause 159 specifies that the Act applies to a new licence issued under the Act in relation to premises registered under Part 15 of the former regulation. This clause also allows a regulation to delay the application of clause 41(1)(b)(iii) and (iv) to the licence until a stated date not more than 1 year after the commencement of the Act. The rationale for this provision is the same as that for clause 157(2).

Clause 160 provides for the commencement or continuation of proceedings for an offence against a provision of the former regulation, as if the Act had not been commenced.

Clause 161 enables a regulation to be made about a matter to achieve the transition from the operation of the former regulation to the operation of the Act, if the Act does not provide for the particular matter. This clause and any transitional regulation made under it, expire 1 year after the commencement of the Act.

PART 11—AMENDMENT OF ACT AND REGULATIONS

Clause 162 provides that Schedule 1 amends the Act and the regulations mentioned in that Schedule.

SCHEDULE 1

Schedule 1 provides for consequential amendments to be made to the *Health Act 1937*, the *Health Regulation 1996* and the *Environmental Protection (Waste Management) Regulation 2000*.

The amendments to the *Health Act 1937* include the insertion of a new section 100A which allows a regulation to be made about skin penetration processes not covered by the Bill (eg. acupuncture), and the premises where such processes are carried out. Skin penetration processes such as acupuncture are not included in the Bill because infection control requirements for health care facilities will be set out in the proposed Public Health Act. This Act will repeal and replace the *Health Act 1937*. The regulation-making power under section 100A provides a means by which requirements for the purpose of minimising infection risks in relation to these skin penetration processes can be imposed pending the enactment of the new Public Health Act.

SCHEDULE 2

Schedule 2 defines certain terms used in the Act.