Speech by

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PUBLIC HEALTH (INFECTION CONTROL FOR PERSONAL APPEARANCE SERVICES) BILL

Miss SIMPSON (Maroochydore—NPA) (11.05 p.m.): The Public Health (Infection Control for Personal Appearance Services) Bill 2003 seeks to replace certain provisions of the Health Act to introduce a contemporary legislative regime aimed at minimising the risk of infections in the personal appearance industry. It covers practices such as body piercing through to hairdressing and other beauty therapies where issues of potential infection arise. In recent years, national competition policy has required a substantial review of all health legislation. These reviews mandate a reassessment of the anticompetitive nature of some laws and require that all laws pass a public benefits test and a risk assessment.

This bill before the House has resulted after extensive consultation. Following consideration of the public benefit test and risk assessment of the need for laws governing these industry practices, it establishes a two-tiered framework depending on the higher or lower level of risk. Skin penetration services such as body piercing or tattooing where there is a possible loss of blood or other body fluid is obviously a higher risk personal appearance service, and hairdressing, beauty therapy and some skin penetration procedures such as nose piercing and closed ear piercing are non-higher risk personal appearance services. Regardless of risk, the bill requires all personal appearance services to minimise infection risks to clients but only the higher risk services such as tattooing and body piercing must be licensed under this bill.

Consequently, businesses currently involved in tattooing and body piercing will still need to be licensed but hairdressing as a business will not need a licence under this health legislation. However, it is extremely important that businesses delivering these non-high risk personal appearance services be aware that they are still obliged to meet other requirements of this bill such as compliance with the infection control guidelines, which will replace the current regulations.

They also may still be required to formally notify their local government of their business details and activities or otherwise face a fine of 50 penalty points maximum, which is currently $3,750. While I am sure businesses such as hairdressers will welcome the fact that they no longer must seek a licence for these lower risk activities, new entrants to the industry may fail to understand the necessity of the notification process to their council. This formal notice procedure becomes even more confusing in that not all councils will require businesses to notify them. If a council does have by-laws requiring the notification, the contents of that notice are also prescribed in this bill.

The local council cannot charge this category of non-higher risk businesses a fee when they do give notice for the collection of these details. The local council can charge only for a licence fee for a business providing a higher risk personal appearance service. However, both the high risk and non-high risk sectors of these businesses can be charged fees by council for inspecting business premises under the provisions of this bill. Subsequent inspection fees may be charged for further follow-up inspections after a remedial notice has been issued against offending businesses.

I mentioned some of these provisions and their differences and the notification because I think it is important where there is a change in the regime there could be some confusion arising with some businesses that may not be required to give notice in one particular area, and people may not know that in a subsequent council area different provisions apply.This is something I believe will require quite a deal of advice and education to people who are potentially entering into these businesses, particularly for the first time. Obviously people do not want to inadvertently run foul of the legislation.

There are other pieces of government legislation, such as workplace health and safety laws, with which businesses must still comply, but the bill before the House is specific to the matter of infection control. I mention this today as the Police Minister introduced into parliament amendments to the Vagrants, Gaming and Other Offences Act 1931 with the Police Powers and Responsibilities and Other Legislation Amendment Bill 2003. These amendments will prevent unlawful tattooing and body piercing of minors, specifically prohibiting as part of a business transaction the body piercing of the sexual organs or nipples of a minor as well as prohibiting the tattooing of a minor. These are in other legislation that is to come before the House. I think it is worth mentioning here because there is an overlap with these issues. The health legislation, though, is specifically to do with infection control.

Other aspects of this new health legislation which are different from the current provisions are that one licence will be able to issued to be cover multiple business premises and make it possible for licences to be granted for a period of up to three years instead of each year. I am certain that these will be very welcome provisions. Another new provision is the recognition of mobile businesses and the fact that they will cross local government boundaries. This bill provides for the higher risk businesses to be licensed in one local government area. In the other local councils where the services may also be provided the businesses do not have to be licensed there as well but they must still notify the councils of their operations in those areas. This bill outlines the information they have to provide as part of that notification and the minimum time frames.

It is important to note that the bill also provides review mechanisms such as a right of internal review and appeal to persons aggrieved by decisions. I will make reference to some of the issues that have been raised in the Scrutiny of Legislation Committee's comments on the bill. In recent legislation before the House, particularly health legislation, there has been a tendency to bring in this new drafted legislation which removes from the scrutiny of the parliament the guidelines that would under the old legislation have been available for scrutiny and possible disallowance in the form of regulations.

The guidelines, in this case the infection guidelines, will not be subordinate legislation that can be disallowed; while notice will be gazetted, as I understand, of these guidelines being approved. Those guidelines will not consequently come to the parliament for the opportunity of scrutiny or disallowance.

I want to make reference to the Scrutiny of Legislation Committee's *Alert Digest* No. 11 of 2003, particularly clause 28, where it is stated—

The committee notes that cl.28 empowers the Minister to make infection control guidelines. Whilst these guidelines are not themselves subordinate legislation, they only take effect if their making is notified by a notice, which the bill declares to be subordinate legislation and which will therefore be subject to Parliamentary tabling and disallowance.

The Explanatory Notes argue that the nature of the guidelines are such that they could not easily be translated into legislative format.

The committee refers to Parliament the question of whether, in the circumstances, the provisions of the bill sufficiently subject to the scrutiny of Parliament the delegated legislative power embodied in cl.28.

This is an issue that has been debated previously. It is quite a significantly different process that occurs from the true subordinate legislation, as has been traditionally known in this parliament.

I know that the arguments will be that it is an easier way to encompass broad-ranging principles in guidelines as opposed to regulation. I believe it is something that requires ongoing scrutiny to ensure that there is still clarity for people as to how those binding rules will affect them and to make sure that the parliament is still an active part of that process rather than providing what is otherwise a token approval of what is no longer truly subordinate legislation.

There are other comments within the Scrutiny of Legislation Committee's *Alert Digest* which are worth mentioning at this point. In regard to clauses 141 and 142, the *Alert Digest* asks—

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?

The committee's finding in this regard states—

The committee has previously considered provisions which reverse the onus of proof, particularly in relation to corporations. Whilst difficulties of determining liability in certain circumstances (for example, corporations) are appreciated, the committee as a general rule does not endorse such provisions.

The committee refers to Parliament the question of whether proposed cls.141 and 142 contain a justifiable reversal of onus of proof, and therefore have sufficient regard to the rights and liberties of individuals.

Once again this is something which is occurring more and more in legislation. It has a tendency to make it easier to enforce legislation by making it harder to defend yourself where there has been a reverse onus of proof. I believe that is also something that is of concern as it has a tendency to make it easier for government, but not necessarily easier for those who with good intent seek to abide by the law. But there is a reverse onus in that they have to deal also with potential issues of disagreement.

The Scrutiny of Legislation Committee's report also makes the comment—

Does this legislation provide appropriate protection against self-incrimination?

This is quite an important point.

Clause 102

The committee notes that cl.102(2) denies persons the benefit of the rule against self-incrimination in relation to the compulsory production of a narrow range of documents, namely, documents required to be kept under the bill or issued to the person under the bill. The committee generally opposes the removal of the benefit of the self-incrimination rule, and usually only considers it potentially justifiable if certain conditions (see references above) are satisfied.

The committee refers to Parliament the question of whether the denial of the benefit of the self-incrimination rule by cl.102(2) is justifiable.

When these comments are occurring more frequently with the Scrutiny of Legislation Committee's *Alert Digest*, we have to remember that the penalties that are applicable for these offences are still quite substantial. The objective of the act is to ensure that the risk to consumers is minimised, which is obviously something that we all support. We also want to make sure that the regulatory framework is, in fact, one that pays due attention to people's rights in law as well. When the parliament legislates away those rights or inhibits them, it is something about which we need to be very cautious. Ultimately, the powers of the Crown or a government instrumentality and how it implements legislation is fairly substantial when it is compared to the individual powers of a person who has offended, or is accused of offending, against an act of parliament. In other words, it is not a level playing field. We must be mindful of that as legislators.

There are other questions that have been raised in the *Alert Digest* that I would recommend members pay attention to. While the committee also asks why the bill does not bind the state, I notice that is something that has become increasingly common. It may be argued that the state is not really involved in the commercial business of providing parent services. That is probably fairly true, unless the minister is aware of any commercial businesses that the state is involved in. It is possible that such a conflict would not arise, thus the fact that the state is not bound may not be such an unreasonable assumption. If there are commercial businesses, I am sure we would like to know about them.

At the end of the day, the opposition certainly supports the broad thrust of this legislation. As I have already put our concerns on the record with regard to some of the drafting provisions, my final comments relate to the explanatory notes and the estimated cost for government implementation. The explanatory notes say that this legislation does not have any significant financial implications for the Queensland government. However, what are the financial implications for local government? I know that this legislation has been consulted on with local government. While it is not mandatory for local governments to pass a by-law requiring the non-higher risk businesses to notify them of their business, I would imagine that a council could be liable for not actively monitoring the compliance of these businesses under the act. As a result, it would be in their own interests to minimise their own risk of litigation to have such a by-law and to ensure that they have an active database of businesses that are covered by this legislation.

I question what the cost to local government will be, as I fear this will cause more cost shifting to local government. It is to be noted that the non-higher risk businesses will not be licensed, as has been mentioned before, which means that the chance to recoup the cost of actually entering that data in a databank and keeping it clean will not be available through the licensing regime. However, I certainly support minimising fees to business. I want to ensure that we do not kid ourselves in the parliament by saying that we are doing that, yet we just pass it on in another way to another sector of government.

I note that the bill also provides for mandatory infection control qualifications to be held for the higher risk services which are defined in this bill, and that is certainly something that we welcome. We await further advice as to the progress of the development of those courses and their subsequent approval. At the end of the day, this is about trying to provide better consumer services for the public. While we know that the type of personal appearance services has changed a lot over the years, this legislation recognises that the regulatory framework has to be fairly flexible and able to keep pace with those changes. I thank the Health Department staff for their briefing on this legislation and affirm that we support the thrust of this legislation.