



SUBMISSION

*Licensing and Regulation
of the
Tattoo Industry
in Australia.*



Table of Contents

- Executive Summary
- Introduction and Role of the Australian Tattooists Guild
- Existing Schemes/Perceived problems with NSW/QLD
- Proposals for future reform
- ATG industry recommendations
- Conclusion
- Consultation
- Legislation
- Media
- Appendices

Attachments

- ATG Duty of Care
- ATG Code of Conduct
- Data Analysis
- Industry Impact Statements
- Civil Liberties Australia supporting submission



Executive Summary

This report provides an analysis and evaluation of the current and prospective licensing and regulation of the tattoo industry in Australia. Broad consultation investigating the current culture and concerns of professional tattoo artists has been considered during the writing of this report.

Methods of analysis of the existing systems have included comparisons to other industries currently regulated and licensed by State Government.

The recommendations offered suggest constructive ideas that are workable for any state government and offer insight into where problems have occurred and why.

Information has been contributed from various groups including Civil Liberties organizations and government departments.

Surveys have also been conducted on behalf of the ATG to gauge public opinion in regards to the provisions set out by the recent *Tattoo Parlours Act 2013 (QLD)* and *Tattoo Parlours Act 2012 (NSW)*.

Relevant data to the tattoo industry has also been supplied.

Results from this research show that the existing systems do not provide the tattoo industry with any productive outcomes.

Prospects of licensing and regulation of the tattoo industry in its current form are not positive or conducive to future growth of the industry. Nor do they protect the interests of the individual.

This report also finds that current systems have the potential to put the public at risk, as well as permanently damage this unique industry.

The major areas of concern require investigation and corrective action by state governments.



Introduction to the guild

The Australian Tattooists Guild (ATG) was founded in February 2013 by a group of professional tattoo artists in response to the implementation of the licensing and regulation of the tattoo industry in NSW and QLD.

The ATG launched nationally in 2014 with the aim of uniting and supporting professional tattoo artists nationwide, whilst also providing through the Guild's structure a professional set of standards for tattoo artists to uphold.

The ATG have developed these standards and codes, in consultation with the wider industry to provide tattoo artists with a solid foundation on which to practice. As a part of the membership criteria for our organization, all artists are required to adhere to these standards.

Since its formation the group has continued to liaise with government and media to make sure its members interests are represented, and that any further regulation and legislation of tattooing in this country will be in the best interest of the professional standards that the Guild upholds.

The ATG is a not-for-profit organisation dedicated to protecting the history, culture and future of Australian Tattooing as well as elevating and advancing this art form.

We have an ongoing and larger vision to create national accreditation standards and industry-specific education in order to protect the industry from non-professional tattooists and suppliers.

It is through this submission that the ATG hopes to initiate a transparent and responsible dialogue that facilitates the necessary consultation by the various state governments. Subsequently, the ATG aims to achieve a better out come for the impending licensing and regulation of the tattoo industry in states where the licensing has not yet been implemented, as well as influence any changes to the existing systems.

The ATG supports efforts that are being made to remove any potential criminal elements that may exist within the tattoo industry or the wider community but would ask the government to consider this submission when drafting legislation that may potentially be invasive and or intrusive to tattoo artists lives and working practices, and which may ultimately threaten the future of this unique industry.



Existing Schemes/ Perceived problems with NSW/QLD

Lack of industry consultation

The fact that neither NSW or QLD governments engaged in any real industry consultation resulted in schemes that have now created problems for both professional tattooists and the general public alike.

There exists a distinct lack of awareness within legislation of the way the culture and industry of tattooing in Australia operates. The issues that have been created through this lack of insight continue to cause ongoing strain on professional tattooists in licensed states, as most now feel disillusioned with the systems in place. It is perceived that an opportunity to introduce some much-needed structure into this small but thriving industry has been missed.

Proof of professional practice/ Amateur operators

Due to the lack of a provision for any proof of professional practice in existing schemes, the industry is now experiencing many new tattoo businesses opening with amateur operators who have little to no experience.

Despite the tattoo industry currently having no accredited training regarding the wider technical practices of the art form, it is broadly accepted that any tattooists who wish to become professionally employed within the industry would first spend time working in a professional, council registered studio to gain the skills necessary to ensure that best practice is adhered to.

Throughout Australia, tattoo studios frequently encounter clients who have had work applied in unregistered premises by amateurs. The potential health risks for this practice are enormous and go beyond concerns of cross contamination. Inexperience and lack of integrity can lead to both fibrosis and psychological problems for the client. This continues to be a major concern to both professional tattoo artists and the public alike.

Due to the structuring of current licensing in N.S.W and Q.L.D, many areas where tattoo studios have ceased to operate, presumably due to licenses being denied, have now seen new business opening with operators who have little to no experience in the industry.



The single current requirement for licensing being that an individual only has to prove a lack of criminal involvement and close association with organised motorcycle gangs (OMCG) is inadequate if this industry is to be protected and preserved.

In a climate of fear that has been created by existing legislation being solely aimed at identifying and targeting individuals, this new risk has left many professional artists waiting for an incident to occur. It is foreseen that governments may then over-react and impose even more stringent provisions in order to rectify what they have created.

The ATG had been hopeful that the introduction of regulatory legislation would address the ongoing epidemic of amateur tattooing beyond simply imposing fines for individuals operating without licenses.

The ATG have offered suggestions as to how these issues may be overcome in the recommendation section of this submission.

State to state recognition of licenses

The nature of the industry and its professionals is quite transient - it is not uncommon for artists to work at more than one studio, and often within various states.

Licensing is currently not being recognised between any states and tattoo artists are now faced with having to meet requirements in more than one state to continue to regularly operate in this way.

This well-established practice of tattoo artists travelling interstate allows for the experience and shared knowledge in an industry that relies on this sort of conferencing in order to maintain and promote higher learning and experience. This cultural specificity has not been observed or written into any legislation or licensing regime thus far.

Whilst it is acknowledged that implementing arrangements to facilitate mutual recognition of licensing requirements between states is a complex process, it is one that needs mentioning due to the impact that it creates.



License Renewal

Both the NSW and QLD licensing systems have neglected to put in place any structure to facilitate the renewal of licenses. Both tattooists and operators currently have to undergo the entire licensing application process again once their licenses have expired. This includes finger and palm printing as well as police checks.

QLD unlike NSW have also neglected to write any policy that allows for current licenses to continue once the expiry date has been reached. The QLD DFT are currently advising licensed tattooists to reapply 2 months prior to the expiry date of licenses.

Professional artists, many of whom waited lengthy periods to receive their licenses due to the time lag in the processing of initial applications, are now fearful that they will be unable to trade legally whilst they wait again for their new licenses to arrive.

The professional community is struggling to understand why a system of renewal is not in place. It is also perceived that this is a waste of government funds and police resources.

Lack of education for license application

There is no requirement for proof of cross- contamination certification on application of the operators or tattooists license within existing schemes.

This constitutes another serious public health risk if the applicants do not have up to date, relevant information and are not educated/ trained to deal with potential communicable disease's being transmitted to the public.

It is a current requirement of the QLD government, Public Health Act 2003 (Infection Control for Personal Appearance Services) that tattooists require an infection control qualification – HLTIN402B – (Maintain Infection Control Standards in Office Practice Settings). The certification of this qualification is not however required as apart of the licensing application and it is understood that many tattooists operating within this state do not hold this qualification.

The ATG strongly suggest that governments must ensure there is a provision written into future and existing legislation that requires all tattooists applying for a license to have this relevant and important accreditation.



Police involvement/ powers of entry

Enforcement provisions currently allow police to enter licensed studios with sniffer dogs for the purpose of general drug, fire arm or explosives detection without notification.

Tattoo studios are required by health guidelines Australia-wide to be a sterile environment.

An animal entering this environment would cause serious cross- contamination issues and could potentially interrupt the business of any tattoo studio that was being searched in this way for an extended period. The studio would have to be closed and clients asked to leave, potentially mid-tattoo, whilst the entire studio was de-contaminated.

The ATG believe it is not unreasonable, if Law Enforcement Agency's are or continue to be allowed entry into tattoo studios nationally, that written notice be given unless a court issued warrant is in place.

Strain on Police resources re-Finger and palm printing

The requirement of applicants to provide finger and palm prints in existing schemes has had a particularly negative affect on the psyche of the industry. Many artists perceive they have been treated as criminals whilst never having committed an offence.

An ongoing problem experienced during this part of the application process was the lack of notification for the police stations required to take fingerprints. This process obviously stretched police resources.

Many applicants were repeatedly told they could not book a time at there local Police station to have their prints taken, many were repeatedly turned away and often long waits of up to several hours occurred.

Many instances were reported of police officers being completely unaware of the process required, or their part in the process, and were having to access the department's website to confirm their role.



Police checks should provide interested agencies with all information required. It is also recognized that as it is a requirement of applicants to consent to a full national police check, any criminal conviction will become apparent.

It is obvious that these prints are being used to create “criminal profiles” for tattoo artists for future reference.

It is perceived that finger and palm printing is incongruent with the determination of whether an individual is a fit and proper person. It is also a demoralizing process.

The ATG are of the opinion that these provisions are also a questionable breach of civil liberties and an unnecessary requirement for a tattoo artist, and/or operators who simply wish to continue their small business venture. It is also perceived to be a waste of police resources.

Lack of infrastructure

The lack of staff training within the Dept. of Fair Trading Offices in both NSW and QLD was very apparent when it came to any questions regarding the legislation and licensing scheme that was outside of the information listed on the department’s websites.

Tattooists often had to deal with staff that had no idea of the application process and could not provide answers to simple questions.

It was not uncommon for the receiving officers to have to read from the website in order to ascertain the appropriate actions necessary for receipt of the application.

This distinct lack of training for those attending to the applications meant that often applications were incorrectly processed.

There was a real lack of information in particular for the licensing of operators who were working under or within a company structure, as to who was to be licensed. This information did not specify if a director or the company itself required licensing.

Information was also not specific as to whether or not separate licenses were required for any other partners regarding tattooing within the umbrella of the company. Often the licensing agent gave



several different answers because these situations had not been pre-empted even though these are standard small business operating practices.

A common complaint about the licensing process was the lack of notification of the new laws, the deadlines and the necessary requirements.

Relying on media that is fast becoming out of date, such as newspaper notification does not help the studios make the transition in an efficient manner.

It is perceived that the most efficient method of notification of any licensing regime's introduction and cut-off dates would be most efficiently facilitated by local council, as all professional studios should be registered. It is however acknowledged that local government may not get involved with consultation and awareness for regulatory changes.

The ATG express interest in providing consultation re any future schemes that require broad notification of tattoo studios and would be interested in aiding in the facilitation of information to the industry.

Effect on Business Insurance

Another disturbing occurrence since legislation has been introduced, has been the large numbers of insurance companies either terminating their contracts or refusing to renew them with property owners who have tattoo studios as tenants, This has been experienced nationally.

Many tattoo studios have had their tenancies terminated due to property owners not wanting to become liable for the large excess being asked by offshore insurers.

It is now recognized that few if any Australian insurance companies will accept tattoo businesses as clients and many have now decided not to renew contracts, some after periods as long as 15 years.

In most cases it has been reported that insurance company's are directly linking these decisions to the current situation with OMC's and the decisions government's are making to deal with them.

The ATG have been provided with a statement that evidence's this trend. See appendix.



Proposals for future reform

The proposals below are for the provision of solutions to the existing problems regarding licensing systems currently in use in NSW and QLD and offer suggestions that should be considered when any new systems are being implemented in other states and territories. They should be noted in addition to the other concerns listed in this submission paper.

1. Regular meetings between the government and the ATG regarding the preparation of new tattoo legislation or licensing procedure so as to foresee any difficulties in both introducing new legislation and resulting regulation in regard to the unique nature and culture of the tattoo industry.
2. The current status of communications network between the licensing agent and the police be assessed when considering application deadlines and grace periods, should police intelligence and Police Commissioner approval be required of any tattoo licensing system.
3. A national police report from a government-approved agent (such as those available readily online by existing companies) be acceptable as part of the application process, thus reducing the administrative burden on the police service and any consequential communications problems between the police and the licensing agents. The ATG suggest that the cost of this police check be taken into consideration when Government is scheduling fees for any licensing.
4. Any future licensing scheme of the industry that requires police involvement needs to ensure a high level of transparency as to what information is being collected for and to what end it will be used. Due to no information being given to applicants, other than their police history was being checked for any potential connections to criminal organizations, an atmosphere of fear was created. Many tattoo artists who had previously worked in studios owned by OMCGs were left for extended periods, (due to the lengthy transition times of applications) not knowing whether they would be granted a license due to the lack of information that was made available. State governments should take it into consideration when drafting legislation for the tattoo industry that many tattoo artists with no links to any OMCGs have worked in businesses that were/are owned as legitimate businesses by OMCGS. It should also be noted that as recently as a decade ago many studios in Australia had some connection or were frequented by OMGS, meaning many of the tattoo industry's most senior artists have at some point worked with or for OMCGs. This point should be carefully considered when agencies are determining whether or not to issue licenses to tattoo artists on this connection alone. It should also be noted that like most industries, many individuals hold criminal records for various crimes.
5. The ATG are of the opinion that the only crimes that should be deemed undesirable for the procurement of a license are those of a sexual or overtly violent nature.



6. Staff in the licensing agency be briefed on the new application process, or alternatively a separate office within the agency be trained to receive and process the new licenses. We strongly advise licensing procedures for operators to be clarified in relation to potential small business structures; including trusts, public and private companies, partnerships and joint ventures. Receipt of the application must be made available upon application to the registering party so as to provide proof to any enforcing agent of the application process having started.
7. A mail out to inform in person the new requirements needed for the licensing procedure, along with very specific and thorough FAQ on the licensing agent's website.
8. The scrapping of unnecessary fingerprinting requirements of the license application. If this questionable process is deemed to be necessary by state government's, all police clerical staff need to be notified of the new license requirements and any potential burden placed upon their office.
9. The International tattoo artist's temporary license be extended to multiple entry permits in order to insure that Australian conventions, tattoo artists and the general public do not loose the attendance of these artists.
10. The introduction of provisions that ensure individuals applying for a tattoo artist's license have a minimum 12 months practice in a Council Registered studio.
11. Governments actively encourage professional tattoo artists to undertake the industry standard education by introducing provisions that weave course certification into licensing systems.



ATG Industry Recommendations

1. The ATG believe the best outcome for current and future licensing of the tattoo industry would be achieved through the provision of education to the industry.

Any future licensing of the tattoo industry should require the applicant to obtain the current industry standard course qualification for cross-contamination and sterilization, thus ensuring that all licensed tattoo artists have this important qualification.

The ATG is of the opinion that this course could potentially be offered as a part of the licensing process, whereby any fee charged for the tattooist's license would cover the cost in full or part of this course. As some members of the tattoo artists industry already hold this important qualification, it is suggested that any fee imposed under the licensing structure be adjusted accordingly.

*The ATG's Duty of Care stipulates that it is the tattooist's responsibility for their client's health and safety, and ensures that clients receive a quality of care and treatment that complies with both profession-specific and generic standards of practice.*¹

¹ The ATG is currently working with a national RTO course provider to modify the existing recommended/required course HLTIN402C (Maintain infection control standards in office practice settings) to modify the existing course so that it becomes more industry specific.

This current industry standard course is nationally recognised and is a unit offered predominantly to nurses and healthcare workers training and working in the health care sector. Unfortunately this course does not cover elements that deal specifically with the practical area of the tattooing practice. It does however cover extremely important subject matter that is relevant to the tattoo industry.

The existing course unit is available both online and in-house with current cost being in the area of \$450.00.

The ATG is currently developing a set of information packages that will be available to its members via the ATG website to provide tattoo artists with industry-specific practice information. This is a step we are taking to ensure the high standards the ATG upholds are met until such time as an industry-specific course is developed in the future.



2. The ATG recommend that all applicants for a license must provide a statement of professional practice.

Proof of a minimum 12 months experience in a council-registered studio would remove the problem of amateur tattooists obtaining professional licenses. This lack of requirement for proof/statement of professional practice poses a public health risk due to the nature of tattooing.

An accredited cross-contamination course will provide individuals with an appropriate level of hygiene to operate and practice within the tattoo artist's industry. It will not however prevent individuals from doing damage, such as Fibrosis / Hypertrophic scarring. It will also not prevent the psychological trauma that can be experienced by a client due to a lack of artistic knowledge and integrity on the part of the tattooists.

The ATG suggest that proof of 12months practice may be obtained through the signing of a statutory declaration, which states the period of professional practice by an individual within a council registered studio. Either the tattoo studio proprietor or the individual could sign this declaration.

Individuals who are in training but have not yet been employed in the tattoo studio for the full 12 months could be issued with a probationary license, which allows them to have access to the business but not to partake in any skin penetration practices. It is thought that this probationary status could be held on a register, which was accessible to interested agencies via the Internet, thus reducing the burden on departments to produce hard copy licenses.

The ATG is encouraging this position through its membership structure, which requires tattooists to provide proof of qualification and experience in order to achieve full membership.

3. Individuals applying for a tattoo artist's license must be required to work in council-registered premises.

The requirement for all individuals applying for a license to work in council- registered premises would eliminate the on-going problem of non-professional individuals practicing tattooing which continues to be a concern of professional tattoo artists and the general public. This requirement would also ensure that all professional tattoo artists have access to professional standard sterilization equipment as required by regulation.

Confirmation of a studio's registration should be checked via a council database.

The ATG's Code of Conduct stipulates that tattooists must carry out their work in adequate professional premises that embody standard occupational and safety provisions as well as conforming to health department standards. The ATG's Duty of Care stipulates tattooist's obligations to refuse service if their ability to practice safely is jeopardized; this includes instances where unsafe premises or lack of access to proper



*equipment compromises the safety of the public.*²

4. The ATG recommend that states recognise tattoo licenses from other states

Mutual recognition is a common practice within many industries operating in Australia today. It is understood however that the process to facilitate this is complex. The ATG suggest that states recognise licenses from other states with a potential online registration of interstate artists.

Due to the cost of licensing within each state and the frequency with which tattooists travel it is recommended that tattooists not be charged for this registration.

*The ATG's Code of Conduct stipulates members strive to contribute to the development of tattoo knowledge, culture and education. Freedom to travel and work from state to state stimulates and furthers the industry through healthy discussion and exchange of information.*³

5. The ATG recommend that visiting overseas tattoo artists be eligible for multiple permit/ temporary licenses.

The Australian tattoo industry and the tattoo collecting community are extremely fortunate to receive some of the worlds most highly accomplished tattoo artists who travel to Australia annually. Not only do these international artists visit as guests in tattoo studios, they also attend our growing numbers of International tattoo conventions. International tattoo artists also facilitate the important feature of conferencing within the industry. The ATG suggest that in order to accommodate this important relationship, multiple permits/ temporary licenses be made available to visiting international professional tattoo artists for this purpose.

The ATG is encouraging this position through it's membership structure, which makes provisions for international artists visiting Australia to be included in the ATG, thereby encouraging all tattooists operating in Australia adhere to the ATG's codes and standards.

² The experience of tattooists with local council health officers Australia-wide, who inspect tattoo studios, is more often than not that the Council Officer is unaware of working practices within the tattoo industry. The ATG proposes that councils endeavor to educate its officers through the undertaking the current industry course so that a broader understanding of the working practices of the tattoo industry may be obtained. This may also assist officers in providing information to individuals who are registering a premise for the first time as well as recognizing and achieving an ongoing standard within existing studios.

³ It is common practice within the tattoo industry today that tattoo artists travel interstate to do what is called within the industry "a guest spot" at other tattoo studios. This important feature of our industry allows a tattoo artists to not only showcase his/her work in another area but also provides an opportunity for the exchange of information/education with other artists. This practice has also, in part, been responsible for the evolution of the tattoo industry.



6. The ATG supports applicants for a tattoo license having to partake in police checks.

The ATG recognises that due to the nature of the tattooing practice individuals who have been convicted of any sexually based or overtly violent crimes would not be desirable within this industry. The ATG recommend that it would be appropriate for a period of 10 years to elapse since any conviction for a crime of such nature, After which period it would be appropriate for an individual to hold a license.

The ATG's Code of Conduct stipulates members must uphold the law in the conduct of their professional activities and members must be removed from any affiliation with any criminal organization, including OMCGs.

7. The ATG recommends that finger and palm prints should not be required

The ATG are of the opinion that finger and palm printing is incongruent with the determination of whether an individual is a fit and proper person.

8. The ATG recommend that any potential future Bill be named the 'Tattoo Industry Bill'.

The ATG, in conjunction with broad industry consultation, are of the opinion that the 'Tattoo Parlour Act' as is named in other states is inappropriately named. Tattooists nationally have taken offence to the word "Parlour" being used to describe a piece of legislation that aims to license and regulate the tattoo industry. This term that may have been used to describe a tattoo studio nearly two decades ago is now considered out of date and offensive.⁴

⁴ The definition of the word "parlour" as is defined by the Oxford standard dictionary and again in the British free dictionary is as follows - Parlour: reception room in an inn or club where visitors can be received. We do not believe this word appropriately describes the tattoo industry. The wider industry takes offence to the use of the word "Parlour" being used in a piece of legislation that is aimed at licensing and regulation of the tattoo industry. The word "parlour" has negative connotations and is inaccurate by definition.



Conclusion

The Tattoo industry is alive and thriving in Australia today.

Within Australia there are some of the industry's most accomplished artists who are recognised both nationally and abroad.

Over the last decade tattooing has evolved globally, with an interest in this art form now becoming widespread. Many talented and refined artists have chosen to join this industry, now today tattoo artists are revered for the incredible skill they impart into their work, with many artists having lengthy client waiting lists.

The discerning collector may now choose from a variety of styles that for the most part were not available in the past in such a refined way. The tattoo artists responsible for these pieces work incredibly hard and the industry has become very competitive.

A culture within the tattoo industry now exists whereby the hosting and sharing of knowledge is paramount, with artists striving to achieve the highest standards. Tattoo artists travel regularly, both nationally and internationally to attend conventions and facilitate the conferencing of knowledge.

Many tattoo artists today extend their skills to outside of the traditional settings and mediums, and paint to exhibit their work in galleries around the world. Tattoo artists are known to regularly contribute their artwork to a wide range of media platforms and are regularly being sought to contribute to both private and community projects.

Standards within the industry are now rising very quickly and individual artists are having to seek out and apply ever-changing technologies to their work. Most tattoo artists now have expectations of themselves and the studios they work in to provide a professional and well-equipped environment, so as to achieve the best outcomes for clients and themselves.

It is partly due to this fact that the majority of tattoo artists who now practice within this industry do so independently of any known criminal organizations or OMCG's that once owned some of Australia's tattoo studios.

The ATG believe this is a point that needs emphasising and clarifying due to existing schemes having a strong emphasis on identifying individuals and their connections to organized crime.

The response from tattooists, both nationally and internationally has been one of dissatisfaction at the direction in which the legislation regarding the tattoo industry in Australia has taken.



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The majority of tattoo artists feel that an opportunity to have some responsible input from governmental licensing and regulatory systems has thus far been missed. The overwhelming majority of artists are pro licensing and regulation and would welcome responsible action by state governments.

It is hoped that through this submission some insight will be gained into what is required in order to promote and protect this ancient and unique art form.

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Appendix

ATG Mission and Purpose

ATG Duty of Care

ATG Code of Professional Conduct

ATG Articles of Association

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**Civil Liberties Australia submission
in support of the
Australian Tattooists Guild submission
for the
Regulation of Tattoo Businesses**

Civil Liberties Australia (CLA) supports the submission of the Australian Tattooists Guild (ATG) in proposals for the regulation of Tattoo businesses. We recognise that by proactively engaging with the Government, tattoo businesses and the community, the industry can be better regulated, without infringing on civil liberties. The experience in NSW and Qld in the passing of the *Tattoo Parlours Act 2012 (NSW)* and the *Tattoo Parlours Act 2013 (Qld)* has unacceptably infringed on civil liberties. This submission will propose an option for regulation.

Policy Objectives

In considering why the tattoo industry needs to be better regulated, one must first consider what are the qualities of a tattoo artist? CLA and the ATG agree that a fit and proper tattoo artist ought to be a person who:

- is over the age of 18
- possesses the requisite artistic skill;
- produces individualised artwork;
- possesses the requisite technical knowledge;
- possesses the requisite experience;
- is duly qualified; and
- possesses the requisite Occupational Health and Safety certifications.

In contrast, the above mentioned *Tattoo Parlours Bills* in QLD and NSW state that a fit and proper person to work in a tattoo business is a person who is not a controlled person. A logical inconsistency exists. We submit that the core and primary competencies for a person to be a fit and proper person to be employed in a tattoo business ought to be a person who is skilled and experienced at tattooing, possesses the requisite qualifications and knowledge, and is certified to operate the business in conformance with Occupational Health and Safety. Being a controlled person is a status divorced from the art of tattooing.

In the Second Reading Speech in the NSW Parliament, the Minister for Police and Emergency Services, the Honourable Michael Gallacher stated that:

“The Tattoo Parlours Bill 2012 aims to break the stranglehold that outlaw motorcycle gangs have over the tattoo industry in New South Wales.”¹

¹ Hansard (2012) Legislative Council, NSW Parliament, 23 May 2012.

CLA and the ATG disagree with the Minister's priorities for industry regulation. The purpose of this legislation ought to be the protection of the community through the creation of a regulatory regime that ensures tattoo artists are skilled, experienced and qualified to tattoo clients in a safe and healthy manner.

Police Checks

CLA agrees with the ATG and the Governments of NSW and QLD that the Tattoo industry needs licensing and regulation. We submit that Tattoo business operators and their employees should undergo Police background checks for the purpose of ascertaining their identity and criminal history. CLA recognises and agrees with the ATG that, due to the nature of tattooing, individuals who have been convicted of sexual or violent crimes present a public safety risk. It is not acceptable to expose the public to this risk. Furthermore, CLA and the ATG agree that individuals connected to organised crime need to be identified. The ATG Code of Conduct stipulates that

"Members must uphold the law in the conduct of their professional activities and members must be removed from any affiliation with any criminal organisation".²

CLA submits that this industry developed and accepted standard should be adopted nationally. The purpose of this industry based standard is to protect the public from unacceptable risk.

Criminal Intelligence Gathering Regime

CLA and the ATG are concerned, in the highest order, that the *Tattoo Parlours Bills* in NSW and QLD are a mechanism for the gathering of criminal intelligence. This purpose is incongruent with civil liberties. The establishment of a regime which compels all persons (except a financial institution that only has a financial interest in the business) who own, operate, or are employed by a tattoo business, and their close associates, to provide finger and palm prints for "*any purpose that the Commissioner sees fit*"³ is unacceptable

The collection of private information should be consistent with the Australian Privacy Principles. Australian Privacy Principle 6 provides that:

"...personal information about an individual that was collected for a particular purpose (the primary purpose), the entity must not use or disclose the information for another purpose (the secondary purpose)..."⁴

CLA submits that the collection of private information under the existing provisions is not reasonable and proportionate. The necessary checks and balances protecting private information have not been written into the legislation.

The collection of finger and palm prints is incongruent with the determination of whether a person is a fit and proper person to be licenced to own or operate a tattoo business. The collection of finger and palm prints does not reliably indicate whether a person:

² Australian Tattooist Guild (2014) Code of Conduct

³ s. 13(3) Tattoo Parlours Bill 2012 (NSW)

⁴ Officer of the Australian Information Commissioner (2014) Privacy Factsheet 17: Australian Privacy Principles

- is over the age of 18
- possesses the requisite artistic skill;
- produces individualised artwork;
- possesses the requisite technical knowledge;
- possesses the requisite experience;
- is duly qualified; and
- possesses the requisite Occupational Health and Safety certifications.

We submit that the collection of finger and palm prints has been inserted into the *Tattoo Parlours Bills* in both NSW and QLD for collecting criminal intelligence. The expansion of the magnitude of the collection of private information to ‘close associates’ enlarges the scope of collection beyond what is reasonable necessary and proportionate. It is incongruent with the values of Australian society. We submit that the collection of private information should be quarantined for the purposes of ascertaining the identity and criminal history of an applicant. If an application is refused, withdrawn or the licence ceases to be effective, the private information must be destroyed. It is unacceptable that private information is indefinitely retained.

CLA submits that administrative decision making must be open to judicial review. The *Tattoo Parlours Bills* in both NSW and QLD fail to provide an appropriate mechanism for reviewing administrative decisions. Should tattoo businesses be regulated, CLA agrees with the ATG that the ordinary principles of judicial review must apply. Information that does not meet the ordinary evidentiary standards must not be admitted into evidence. It is not acceptable that parties are not availed of the information alleged. It is an affront to natural justice that information is not put to, and tested by an applicant in court. An applicant must be given full access to information taken into account by the decision maker. The current provision in the QLD legalisation which provides that: “*the Judicial Review Act 1991, part 4 does not apply to a decision of the chief executive mentioned in section 56(1)*”⁵ is not acceptable.

Nor is it acceptable that this legislation further erodes civil liberties where:

“Subject to section 56, unless the Supreme Court decides that a decision of the chief executive mentioned in section 56(1) is affected by jurisdictional error, the decision—
(a) is final and conclusive; and
(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the Judicial Review Act 1991 or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity); and
*(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.”*⁶

In a further abrogation of the institutional strength of the judicial system, the abovementioned legislation provides that:

“In any proceedings relating to a review of a decision of the chief executive mentioned in section 56(1), QCAT or the Supreme Court—
*(a) must, on the application of the commissioner, take steps to maintain the confidentiality of a criminal intelligence report or other criminal information”*⁷

⁵ s. 58(1) Tattoo Parlours Bill 2013 (Qld)

⁶ s. 58(2) Tattoo Parlours Bill 2013 (Qld)

CLA submits that this is unacceptable. If information does not meet the evidential threshold, it must not be considered by the court. Lowering the evidential burden to include information, that is not put to the applicant, and cannot be effectively tested in open court, is incongruent with the culture and institutions of Australian society, and the rule of law. CLA agrees with the ATG that, should the Government introduce a regulatory regime, all information put to the decision maker must accord to existing standards.

CLA and the ATG are concerned that enabling an animal to enter a sterile environment poses a public health risk. The above-mentioned *Tattoo Parlours Bills* in both NSW and QLD provide that detector dogs may enter a tattoo business. We call on the Government to consult with stakeholders to negotiate a better approach that balances the needs of tattoo businesses and enforcement agencies.

Further Consultation

CLA and the ATG encourage the Parliament to engage with the industry and consult more widely with the community and stakeholders. The QLD Government engaged in no community consultation prior to the introduction of legislation. This is unacceptable. For the Parliament of QLD to behave so is undemocratic. In NSW a wider level of stakeholder consultation and parliamentary debate occurred. It would be preferable for Governments around Australia to learn lessons from the experiences of QLD and NSW, and engage in genuine consultation with stakeholders at the coal face.

It is also preferable that the laws throughout Australia for the one industry are harmonised, and are based nationally on the rule of law rather than arbitrary, non-evidence-based decision making, accompanied by no practical review or appeal rights.

CLA is available and willing to further discuss this issue. Please contact:

Dr Kristine Klugman OAM
President Civil Liberties Australia



CLA Civil Liberties Australia Inc. A04043
Box 7438 Fisher ACT Australia
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October 2014

⁷ S. 57(2) Tattoo Parlours Bill 2013 (Qld)



ATG response to VLRC Consultation Paper

In response to VLRC consultation paper, our organisation remains mindful that the use of regulatory tools to prevent the infiltration of organized crime may indeed affect the pursuit of other regulatory purposes and objects, and may jeopardise the overall effectiveness of future schemes.

It is perceived that the findings of this report offer our industry an opportunity to discuss prevention of criminal infiltration in the context of developing solid regulatory regimes.

As a result, we have chosen to direct our responses to the use of regulatory tools not only from a perspective of allowing agencies to prevent infiltration of crime, but also to ensure suitable regulatory responses are developed specifically for the tattoo industry. Such responses would ensure positive outcomes were achieved across the broader industry through the implementation of these tools.

Our organisation, in consultation with the broader industry, now looks to develop a framework for suitable policy that can be presented to Government in the near future.

During the drafting of this framework we shall look at other mechanisms and jurisdictions in an attempt to identify a system of regulation that ensures positive outcomes for industry are achieved.

In considering why the tattoo industry needs to be better regulated, one must first consider what are the qualities of a tattoo artist? A fit and proper tattoo artist ought to be a person who:

- possesses the requisite artistic skill
- possesses the requisite technical knowledge
- possesses the requisite experience
- is duly qualified; and
- possesses the requisite Occupational Health and Safety certifications

Any framework being specifically developed for the tattoo industry will look to the following purpose and object:

- to promote professional standards, growth, integrity and sustainability within the industry
- to reduce risk to the general public
- to eliminate/minimize infiltration of organised crime
- to eliminate risks associated with amateur operators



Suitable regulatory responses developed specifically for the tattoo industry have an opportunity to not only remove criminal elements, but also address the many issues industry currently faces.

The key element of any regulatory regime that seeks to proactively support industry whilst addressing the manner in which criminal input and activity exists will regulate the entry of people into industry through the development of a strong framework. This will ensure entrants qualify for licensure through suitable entry pathways that necessitate formal recognition of both qualification and education.

Positive Licensing

Positive licensing schemes have a strong emphasis on scrutinizing prospective entrants and creating license preconditions. Whilst this structure appears to be capable of implementing the regulatory tools identified by industry to deal with the current issues, caution should also be exercised when recommending this type of regime due to experiences with the implementation of such schemes in other states.

(see - attachment ATG Submission)

Identifying a suitable regulator

In looking to identify a regulating agency to administer future schemes, it is thought that a traditional regulator such as the Business Licensing authority would be best suited to balance the competing policy priorities industry presents. If involvement from police agencies were deemed necessary, it is perceived that the sharing of regulatory roles through a traditional regulator would provide better outcomes than administration from police agencies alone.

Response/ Feedback to draft Model

To identify the purposes of organized crime in industry today, our organisation must look to the social evolution of tattooing in Australia from an historical perspective and identify our industry's roots.

This perspective provides insight and understanding into both the Government's and the broader community's perception that criminal organisations may continue to exist within the tattoo industry today. The tattoo industry was formerly dominated by OMGs with criminal conduct being perceived as ingrained within its operation.

Due to a lack of industry regulation in the past, the practice of concealing and or laundering the proceeds of crime, and the obfuscation of criminal conduct potentially persist to an extent today. This trend has however greatly diminished



due to the recent increase in individuals with a genuine interest in practicing and promoting tattooing as an art form.

Whilst acknowledging that the tattoo industry has at some point become synonymous with criminality due to infiltration in the past, it needs emphasising that this conduct no longer exists to the same degree as it historically has done. Thus agencies need to be mindful of this when developing policies/regimes that exist solely to identify individuals as being associated to criminal organisations.

Response to Consultation Questions

Q.1

In looking to add any information to the existing table 1 we suggest that infiltration exists for the purpose of allowing members of organized crime groups access to the art form through tattooists being employed by clubs.

This long held tradition of clubs training and employing the services of tattooists is well recognised. It should also be noted however that tattooists employed in such situations have often had no affiliation with clubs, nor intentionally profited from the criminal conduct said clubs may have been involved in.

This tradition is also perceived to be in decline as tattooists look to employment in studios where owners/operators have a sincere and vested interest in the art form itself.

Q.2

Identifying elements within industry that are conducive to organised crime activity through the development of a model (SCP theory) would undoubtedly prove to be beneficial for agencies who are tasked with creating frameworks for regulatory tools.

Of particular use to industry is the ability of agencies to develop regulatory responses to the legal environment that creates opportunities for crime rather than the criminal environment.

Q.3

Whilst looking to contribute changes or additions to the Commissions draft model we ask that the issues highlighted in our previous comments be noted.

In the formation of any model relating directly to industry, it may also be helpful to provide data collected by agencies currently responsible for the handling of applications and issuing of licenses in licensed states (NSW/QLD) to the



Commission. The availability of this data may facilitate a better understanding of the effectiveness of these current regimes based on the perception and context of such models.

Feedback on Draft Model

The ability of a SPC approach to identify elements within the business process, as well as the characteristics of the market in which industry is situated, particularly in relation to barriers of entry, is perceived to be of benefit. Identifying these characteristics would also be beneficial in the development of suitable regulatory responses to industry's needs.

Q.4

The following tools are suggested as being useful in addressing the risks as identified in the draft model

- Positive licensing schemes
- Registration Schemes
- Rules relating to the effective control of a business
- Rules relating to who may be employed in a business
- Rules relating to re-entry

Q.5

(a,b,c)

In looking to identify a regulating agency to structure and administer regulatory tools, it is thought that a traditional regulator such as the Business Licensing authority would be best suited to balance the competing policy priorities industry presents. Involvement from local council, education sectors and health departments is also perceived as being necessary.

If involvement from police agencies were deemed necessary, it is perceived that the sharing of regulatory roles through a traditional regulator would provide better outcomes than administration from police agencies alone.

The disadvantage of sole regulation by Victoria Police being its perceived inability to administer/ balance complex policy.

Further, NSW and QLD licensing models suggest that the police are conflicted in their objectivity –i.e. administering the law and investigating criminal behavior vs. regulating an industry perceived to be involved in the very criminality they are investigating.



Segregation needs to exist in order to maintain the fairness and integrity of industry compared to similar industries that are not regulated by the police.

Q.6

If regulatory tools are employed that place sole emphasis on the identification of individuals in order to ascertain criminal status, the industry's broader issues remain neglected.

Introduction of a simple regulatory tool such as positive licensing will introduce barriers to entry for organised crime. This does however need to be done in the context of regulating industry, not demonizing its constituents.

Responsible regulation would endeavor to protect and promote the integrity of industry.

(see supporting doc – ATG Submission)

Q.7, 8

In looking to prevent the infiltration of organised crime groups into lawful industry, it would be useful to regulate entry by requiring would be entrants to obtain a license.

The benefits of a responsible licensing regime include the identification and exclusion of criminals/criminal organisations.

The cost to industry of licensing occurs when regulatory tools are focused on this identification alone.

(c –f) being perceived as beneficial.

Q.9

Group-based license exclusion rules are perceived as being potentially harmful due to the employment of non-affiliated tattooists being employed/freelancing directly with OMGs.

It is understood however that under a group based exclusion rule, if an artist has a license and consults to a club for tattoo work there should not be an issue, it would be no different from a club member entering an independent, non-affiliated studio to get tattoo work completed.

It is noted however that this type of affiliation may not pass a licensing regime once it has been developed.



Q.10

In theory, monitoring of industry may prove effective in discouraging existing and future entry into industry. However, in practice little seems to have been achieved in states that have implemented inspection based models through licensing regimes.

Inspection based models may hold merit for health reasons.

Inspection based models currently in use (NSW, QLD) that allow police agencies access and seizure of client details/ records are perceived to be a questionable breach of an individual's civil rights.

(see accompaniment submission CLA)

In the event of industry continuing to be unregulated, monitoring regimes are not perceived to offer any type of impact to agency abilities to effectively deter organised crime.

Q.11

- a. The formation of a strong regulatory framework, which ensures entrants possess/obtain the necessary qualification for entry, would negate the need for short license duration and ongoing monitoring. A short time period between license renewal places unnecessary burden on industry participants and agencies alike.
- b. Neither complaint based models nor an inspection-based model appear to offer practical outcomes to police agencies when dealing with the infiltration of crime in industry.

In theory both may be effective. Due however to our organisation not being privy to any data that reflects the effectiveness of monitoring from police agencies in licensed states it is difficult to ascertain its usefulness.

(see ATG Submission)

- c. Investigative powers of a regulator to conduct investigations into industry are perceived to be beneficial in detecting and deterring infiltration of organized crime, particularly as regulators have the ability to exercise said powers according to regulatory priorities (having a comprehensive understanding of industry)
- d. Prohibiting practices such as the use of coercion, physical force and undue harassment are in theory beneficial. We do however concur strongly that enforcement may be difficult.



- e. Record keeping obligations currently exist for the tattoo industry through state Health legislation. With potential revision required. Access to these records would be demined under investigative powers. Further record keeping obligations on industry would create undue burden.
- f. Disclosure obligations that place onus on license holders to report events to regulators thus reducing regulatory burdens are perceived to be of benefit to both agencies and industry. Caution must however be taken in the correct identification of entrants to ensure this structures effectiveness.

Q.12

Detection of unauthorized participants such as amateur operators as well as organized crime groups would best be facilitated through regulators being provided with extensive investigative powers.

The empowerment of a police officer or authorized person to require a license holder to produce license document for inspection as well as requiring a license holder to produce license for inspection by customers is perceived to be of benefit as is empowering courts to declare premises to be “proscribed premises” if it is satisfied premises are being or have been used for the conduct of unlicensed activities.

Q.13

Enforcement measures for non-compliant conduct with any regulatory regime being implemented for the tattoo industry must be inclusive of practice standards as outlined in licensing/ regulatory regimes. Both individual licenses holders and facility operators must be held accountable for non – compliant conduct. Whilst administrative monetary penalties may be appropriate for breeches of standards it is perceived that license suspension and cancellation may be more effective when dealing with criminal conduct. All industry participants being subject to such enforcement measures having the rights of review available to them. Due to the nature of the work preformed by tattooists and the potential to cause harm through non-professional practice, any individual operating without required authorisation should be imposed with criminal sanctions and or ancillary orders, including strike rules and escalating penalties.

Q.14

Regulating the exit from industry does not appear to be applicable to the tattoo industry as licensing is personal and non transferable.

Q.15

Problems definitely exist in the sharing of information between agencies in other jurisdictions (*see attachment ATG Submission*). The creation of a single, open source



database for regulators, where information on each licensee, license types, conditions etc. is held and is subject to restrictions is perceived to offer a suitable alternative to traditional interagency relations, as well as reducing burden on individual agencies and industry.

Q.16

Regimes in other states that have made use of tests for entry such as “fit and proper persons” have seen numbers of individuals who had previously been employed professionally in the tattoo industry refused entry.

It is perceived that there is a fault in this type of rule being applied when used to determine an individual’s competency to hold a license within the tattoo industry as focus is placed on an individual’s previous criminal conduct or criminal history rather than their ability or skill in which to perform the work.

This also applies for applicants who have been denied entry due to perceived connections with organized criminals after having been employed in a facility owned or operated by OMG’s in the past.

Many individuals who trained in the tattoo industry over the last decade may have spent time in social environments that were conducive to various types of criminal conduct. This being due in part to the environment from which the tattoo industry has evolved.

Whilst it is recognized that individuals whom have been convicted of sexually based crimes and overtly violent crimes are not desirable for entry, regulators must be mindful of the path the tattoo industry has taken in getting to today.

Focus needs to be on the individual meeting and maintaining prescribed requirements to hold a license.

Regimes that focus heavily on identification of individuals for entry and in particular regimes that are administered by more than one agency place a perceived unnecessary burden on agencies through requirements that could be better met through the development of strong frameworks. Burdens on regulators, courts and/ or tribunals could be decreased or eliminated by ensuring licensing regimes are tailored to industry needs.

Q.17

In looking to identify other legal responses that may potentially aid in the prevention of infiltration of organized crime groups into lawful industry our organisation remains cautious in recommending orders that have the potential to create barriers to employment for people who are subject to orders such as anti – association laws.



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In respect to Anti-Money Laundering laws, there may be some perceived benefit to making business operation and professional facilitators less attractive to organized crime groups.

On behalf of the entire Professional Tattooing community, the ATG would like to thank the Victorian Law Reform Commission for allowing us to contribute to this important report.



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