



New South Wales

Tattoo Parlours Amendment (Statutory Review) Bill 2021

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Tattoo Parlours Act 2012* (***the Act***) to address recommendations of the Statutory Review of the *Tattoo Parlours Act 2012*, including to—

- (a) rename the Act the *Tattoo Industry Act 2012* and rename the *Tattoo Parlours Regulation 2013* the *Tattoo Industry Regulation 2013*, and
- (b) allocate the responsibilities under the Act of the Secretary of the Department of Customer Service (the ***Secretary***) to the Commissioner of Police (the ***Commissioner***), and
- (c) provide that membership of a prescribed criminal organisation is a mandatory ground for refusal of a licence, and
- (d) provide for a regulation-making power to prescribe mandatory disqualifying offences in relation to refusal of a licence or permit, and
- (e) establish a limited duration permit scheme for body art tattooists visiting from overseas which is not related to attendance at a tattoo show or other industry event, and
- (f) provide for offences in relation to the advertising of body art tattooing and powers to obtain information and records for those offences, and
- (g) make other minor and consequential amendments.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Tattoo Parlours Act 2012 No 32

Schedule 1[1] renames the Act the *Tattoo Industry Act 2012*.

Schedule 1[2] omits the definitions of *adverse security determination* and *Secretary* as a consequence of the changes to reallocate the responsibilities under the Act from the Secretary to the Commissioner. The definition of *operator licence* is omitted as the term is no longer used by the Act.

Schedule 1[3], [19]–[21], [24], [25], [34]–[36], [38], [44], [58], [63] and [65]–[67] make amendments in relation to the reallocation of responsibilities under the Act from the Secretary to the Commissioner.

Schedule 1[4] amends the definition of *authorised officer* to remove references to investigators within the meaning of the *Fair Trading Act 1987* and to require a member of the NSW Police Force who is not a police officer to be authorised by the Commissioner to exercise the functions of an authorised officer under the Act.

Schedule 1[5] inserts the definition of *disqualifying offence* to provide a regulation-making power for particular offences to be mandatory disqualifying offences. The definitions of *licence number*, *member* of a prescribed criminal organisation, *permanent Australian resident*, *permit*, *permit number*, *prescribed criminal organisation* and *visiting tattooist permit* are also inserted. The definition of *master licence* is inserted to replace the term “operator licence”.

Schedule 1[6], [8] and [14] amend provisions to change the name of an operator licence to a master licence.

Schedule 1[7] inserts a power for the regulations to prescribe a body or group as a criminal organisation.

Schedule 1[9] provides that an offence under section 7(1) or (1A) does not apply if the individual performs the body art tattooing procedure specified in section 7(1) or (1A) under a visiting tattooist permit.

Schedule 1[10]–[12] provide that it is not an offence to employ a person who is the holder of a visiting tattooist permit to work as a body art tattooist.

Schedule 1[13] inserts an offence for advertising the carrying on of a body art tattooing business at premises unless the person is a holder of a master licence. It is also an offence for the advertisement not to contain the licence number for the master licence to which the advertisement relates. The proposed section also makes it an offence to advertise the performance of a body art tattooing procedure unless the person is the holder of a master licence, tattooist licence or a permit. It is an offence for the advertisement not to contain the licence number for the master licence, or licence number or permit number for the tattooist licence or permit, to which the advertisement relates.

Schedule 1[15] inserts a new heading for Part 3, Division 2 to include a reference to permits.

Schedule 1[16] updates a reference to Australian residents to refer to permanent Australian residents.

Schedule 1[17] omits a note as a consequence of amendments to section 14 and Part 3, Division 3.

Schedule 1[18] provides for the reallocation of the role for investigations, inquiries and determinations about applications for a licence or permit, or for the renewal or restoration of a licence, to the Commissioner instead of the Secretary. The provision also provides for the Commissioner to investigate additional matters, including whether the applicant has been convicted of a disqualifying offence within the period of 10 years before the application was made and whether the applicant is a member of a prescribed criminal organisation or was a member in the 12 months before making the application.

Schedule 1[22] clarifies that certain requirements applying to the renewal of a licence also apply to the restoration of a licence.

Schedule 1[23], [51], [54] and [56] update references from “furnish” to “give” consistent with plain English policy.

Schedule 1[26] reallocates the responsibilities about the grant, renewal and restoration of a licence to the Commissioner, and provides for the mandatory grounds on which the Commissioner must not grant, renew or restore a licence. These grounds include that the Commissioner is satisfied the applicant has been convicted of a disqualifying offence in the period of 10 years before the application was made, that the applicant is a member of a prescribed criminal organisation or that the applicant was a member in the 12 months before the application was made.

Schedule 1[27] requires a licence number to be included in a licence.

Schedule 1[29] provides for the reallocation of investigations, inquiries and determinations about existing licensees to the Commissioner without referral by the Secretary. The provision also provides for the Commissioner to investigate and determine whether the holder has been convicted of a disqualifying offence, is a member of a prescribed criminal organisation or was a member in the 12 months before the investigation. **Schedule 1[28] and [30]** make consequential amendments to insert a new heading for the Division and to fix a cross-reference because of the replacement of section 19.

Schedule 1[31] relocates section 19(3) and (4) to proposed section 19B and extends the provisions to permits. Section 20 is reinserted with amendments consequent on the reallocation of matters from the Secretary to the Commissioner.

Schedule 1[32] substitutes section 22A to provide that the holder of a master licence does not breach a condition of the licence if a person who holds a visiting tattooist permit is permitted to perform a body art tattooing procedure at the licensed premises to which the master licence relates.

Schedule 1[33] amends the conditions imposed on a licence under section 24 to avoid duplication as a consequence of the offence provision in proposed section 8A requiring that an advertisement include the licence number of a body art tattooing business.

Schedule 1[37] omits section 26(2)(a1) as a consequence of the reallocation of the responsibilities to the Commissioner.

Schedule 1[39] inserts proposed Part 3, Division 5A, which provides that a visiting tattooist permit may be granted to an individual who is not a permanent Australian resident that authorises the person to perform body art tattooing procedures, subject to the conditions imposed by the Commissioner, the Act or regulations. The Division sets out requirements relating to the making of applications for a permit and the cancellation or suspension of a permit and the powers of the Commissioner relating to the permit and the form of the permit.

Schedule 1[40] amends the Division heading as a consequence of the proposed amendment to section 27 to include decisions about permits as decisions for which a person may apply to the Civil and Administrative Tribunal for an administrative review.

Schedule 1[41] makes a consequential amendment.

Schedule 1[42] inserts additional decisions for which a person may apply to the Civil and Administrative Review Tribunal for administrative review.

Schedule 1[43] provides that the time at which the application for the grant of a visiting tattooist permit is taken to have been refused is the same as for a licence for the purposes of the Act, section 27.

Schedule 1[45] omits the provision that disappplied the *Administrative Decisions Review Act 1997*, section 53 (Internal reviews) for decisions referred to in the Act, section 27(1).

Schedule 1[46] inserts proposed Part 4, Division 2A, which provides for additional enforcement powers for the purpose of investigating an offence under proposed section 8A. The power enables an authorised officer to require a person to give information or records or answer questions and enables the authorised officer to record questions and answers in certain circumstances. The power applies whether or not a power of entry is exercised under Part 4.

Schedule 1[47]–[49] extend the requirement to produce a licence under section 32 to visiting tattooist permits.

Schedule 1[50] inserts proposed section 32A to require the Commissioner to issue an authorised officer who is not a police officer with an identification card, and to require the authorised officer to present the card to a person on request when exercising a function under the Act.

Schedule 1[52], [53], [55] and [57] make consequential amendments as a result of the insertion of proposed Part 4, Division 2A to extend provisions relating to requirements to give records or information or answer questions to proposed sections 31B and 31C.

Schedule 1[59] makes an amendment to omit the NSW Police Force from the list of relevant agencies consequent on the transfer of responsibilities under the Act to the Commissioner.

Schedule 1[60] and [61] make amendments to omit reference to permits being issued under the regulations as a consequence of the proposed definition of *permit*.

Schedule 1[62] provides for an additional matter for which a certificate signed by the Commissioner is admissible in evidence in proceedings and is evidence of the matter.

Schedule 1[64] extends the operation of section 37 to visiting tattooist permits.

Schedule 1[68] provides that the regulations may make provision for or with respect to the conditions of permits, in addition to licences.

Schedule 1[69] inserts savings, transitional and other provisions.

Schedule 2 Amendment of other instruments

Schedule 2.1–2.4, 2.5[2], 2.6 and 2.7[2] make consequential amendments to update references to the short title of the Act.

Schedule 2.5[1] and [4] amend the *Road Transport Act 2013* to extend certain provisions to include permits.

Schedule 2.5[3] and 2.7[6], [8], [21] and [22] make amendments to the *Road Transport Act 2013* and the *Tattoo Parlours Regulation 2013* in relation to the reallocation of responsibilities under the Act from the Secretary to the Commissioner.

Schedule 2.5[5] amends the *Road Transport Act 2013* to require photographs under the *Road Transport Act 2013*, Part 3.5 to be provided to the Commissioner on request if the request relates to the administration of the Act.

Schedule 2.7[1] renames the *Tattoo Parlours Regulation 2013* the *Tattoo Industry Regulation 2013*.

Schedule 2.7[3] and [4] make consequential amendments to the *Tattoo Parlours Regulation 2013* to reflect the different types of permits that may be issued under the Act or the *Tattoo Industry Regulation 2013*.

Schedule 2.7[5], [10], [14], [15], [17], [19], [20], [24] and [25] amend provisions of the *Tattoo Parlours Regulation 2013* to change the name of an operator licence to a master licence.

Schedule 2.7[7] updates references in the *Tattoo Parlours Regulation 2013* to Australian residents to refer to permanent Australian residents.

Schedule 2.7[9] inserts Part 2, Division 2 into the *Tattoo Parlours Regulation 2013*. The proposed Division provides for the maximum period a visiting tattooist permit may be granted for, the information and documents to accompany applications for visiting tattooist permits, the time in which an application must be made before the permit is to commence and the grounds for refusing to grant a permit.

Schedule 2.7[11], [12] and [18] amend references in the *Tattoo Parlours Regulation 2013* to refer only to the Minister administering the *Police Act 1990*.

Schedule 2.7[13] and [29] insert provisions into the *Tattoo Parlours Regulation 2013* to prescribe certain organisations and groups as criminal organisations.

Schedule 2.7[16] makes an amendment to the *Tattoo Parlours Regulation 2013* as a consequence of proposed amendments to the Act, section 24.

Schedule 2.7[23] inserts a fee under the *Tattoo Parlours Regulation 2013* for a visiting tattooist permit.

Schedule 2.7[27] provides for a fee under the *Tattoo Parlours Regulation 2013* for a replacement permit. **Schedule 2.7[26]** makes a consequential amendment.

Schedule 2.7[28] prescribes offences under the *Tattoo Parlours Regulation 2013* relating to the advertising of tattooing services under the Act, proposed section 8A as penalty notice offences and prescribes the amount payable for each offence.