NSW GOVERNMENT

NSW Police Force

Statutory Review of the *Tattoo Parlours Act 2012*

July 2020

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Introduction

The *Tattoo Parlours Act 2012* (**the Act**) passed the NSW Parliament on 29 May 2012. All provisions of the Act commenced on assent except for Part 2 which commenced on 1 October 2013. The Tattoo Parlours Regulation 2013 (**the Regulation)** was also made in 2013. Two substantive legislative amendments have been enacted since the initiating Act: the *Tattoo Parlours Amendment Act 2012*; and the *Tattoo Parlours Amendment Act 2017*.

The Act provides a regulatory framework for the NSW tattoo and body art industry to curb infiltration of the industry by organised criminal groups.

The Act is jointly administered by the Minister for Police and Emergency Services and the Minister for Better Regulation and Innovation. The Department of Customer Service (**DCS**) is the industry regulator while the NSW Police Force (**NSWPF**) undertakes probity checks in the form of security determinations and provides for the continuous enforcement of the requirements of the legislation.

The development of the legislation in 2012 canvassed whether to include training as a licensing requirement for tattooists operating in NSW. However, specific and legislated training requirements were ultimately not included in the Act and are considered beyond the scope of this Review. This is further discussed within the report, under training requirements and standards for licensed operators.

Also not covered under the Act are provisions relating to development applications for tattoo parlours, adherence with public health requirements and training for industry participants.

Executive Summary

The *Tattoo Parlours Act 2012* (**the Act**) provides a legislative framework for the probity assessment and licensing of body art tattooists and operators of tattoo parlours. It also provides police powers to ensure the tattoo and body art industry is effectively regulated.

In accordance with Section 42 of the Act, the responsible Ministers are to review the Act to determine whether the policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The review was commenced the Department of Justice on behalf of the responsible Ministers and was finalised by the NSWPF following machinery of government changes in April 2019. In conducting the review, we received submissions outlined in Appendix 1. These submissions have informed the recommendations in this review.

Since the commencement of the legislation, criminal infiltration of the industry has been reduced, allowing new entrants into the industry who do not hold the same fear of violence or stand over tactics previously observed.

Ongoing vigilance is required by all regulators and industry participants to ensure the achievements in cleaning up the NSW tattoo and body art industry are not lost. Police reports suggest an area requiring particular attention is the growing 'backyard' tattooing industry. The rise of this illegal industry represents a challenge to the regulatory scheme and a concerning potential rise in public health risks.

We have concluded that the objectives of the Act remain valid, and its terms remain appropriate for securing those objectives. The NSWPF remains ideally placed to monitor the impact of criminal activity within the industry.

We have made 11 recommendations, designed to provide greater clarity about the operation of the Act. These recommendations:

- recognise the need for greater levels of industry consultation between the NSW Government and the NSW tattoo and body art industry
- provide clarity around eligibility for licences under the Act including through mandatory disqualifying offences and mandatory grounds of refusal
- improve access by permitting visiting overseas artists to participate in the NSW industry which will help to provide both business and training opportunities to local industry participants

Recommendations

Recommendation 1
The regulation and licensing of the tattoo and body art industry continue via statutory instrument including the *Tattoo Parlours Act 2012* and Tattoo Parlours Regulation 2013.

Recommendation 2
NSWPF become the sole administrator of the scheme. [1]

Recommendation 3
All tattoo and body art industry participants continue to be required to be licensed in NSW.

Recommendation 4
The *Tattoo Parlours Act 2012* be amended to provide that membership of an organisation prescribed in the Regulation is a mandatory ground for refusal when applying for or renewing a tattoo licence in NSW, and to require the advice of the NSW Commissioner of Police prior to prescribing an organisation in the Regulation.

Recommendation 5
The *Tattoo Parlours Act 2012* be amended to provide that the Secretary must refuse a license if the applicant has been convicted of a prescribed offence, and include a regulation making power to prescribe offences.

Recommendation 6
Insert into the *Tattoo Parlours Act 2012* provisions based on sections 43 to 45 of the *Tattoo Industry Act 2013* (QLD) to provide for a limited duration a visitor permit scheme for visiting overseas body art tattooists, which is not tied to attendance at any tattoo show or other industry event.

[1] If NSWPF becomes the sole administrator of the Act, references to the 'Secretary' in the Act would be replaced with the 'Commissioner'.

Recommendation 7
Public health requirements associated with the tattoo industry continue to be regulated under the Public Health Act and regulations.

Recommendation 8
Insert into the *Tattoo Parlours Act 2012* a provision similar to section 32 of the *Security Industry Act 1997*, to prohibit the advertising of body art tattooing services unless the person or persons offering the services holds a current licence under the Act.

Recommendation 9
A mechanism be established to conduct regular, practical consultation with the tattoo and body art industry in New South Wales.

Recommendation 10
The principal Act be renamed the *Tattoo Industry Act* and the regulation to be renamed the Tattoo Industry Regulation.

Recommendation 11
A single licence number be assigned to each licensee where appropriate.

Terms of Reference

The statutory terms of reference for the Review are outlined in section 42 of the Act, which provides that:

(1) the Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) the review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) a report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

The call for submissions for the Review also invited respondents to consider the following issues:

(1) How to ensure criminals do not use 'clean skins' as licensees and continue to operate the business behind the scenes.

(2) Should the Act list a set of mandatory disqualifying offences, as in, for example, the *Security Industry Act 1997*? If so, is a 'fit and proper person' test still required?

(3) Should tattooists continue to be licensed under the scheme, or only parlours/ operators?

(4) What level of police enforcement is needed to keep the industry free of organised crime influence?

(5) Does the Act present any barriers to entry for prospective new businesses, which need to be considered?

(6) Should tattoo parlour licences issued by other Australian jurisdictions be recognised in New South Wales?

The *Tattoo Parlours Act 2012* Policy Objectives

The Act was developed in response to mounting public evidence indicating that tattoo parlours were being used to deal drugs and launder money. As described in the Second Reading Speech, the *Tattoo Parlours Act 2012* aims to:

> *Break the stranglehold that outlaw motorcycle gangs have over the tattoo industry in New South Wales… Bikies will no longer feel that they own the industry and that they have the right to stand over, and extort, owners of tattoo businesses who are unaffiliated with outlaw motorcycle gangs. Nor will tattoo parlours be able to provide a means for organised criminals to launder the proceeds of crime.*[2]

The Act formed part of a broader legislative response to gang crime at the time. This included legislation aimed at controlling criminal groups and consorting by members of criminal groups.

The Act was not intended to regulate training provided to the industry nor the skill levels of industry participants or intended to encroach on the regulation of the industry provided by the *Public Health Act 2010*, of skin penetration procedures. This has not changed. NSW Health and local government authorities are responsible for regulating tattoo parlours from a public health safety perspective.

[2] NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 3 May 2012, Anthony Roberts, Minister for Fair Trading

Overview of Submissions received

The public consultation period for the Review was conducted from 5 June 2017 until 29 August 2017. Submissions were accepted via the NSW Department of Communities and Justice (**DCJ**) and '*Have Your Say*' websites, the Department of Justice's Instagram account, and through industry bodies.

A total of 17 submissions were received from stakeholders (listed at **Appendix 1**), including the Australian Tattooists' Guild, the NSW Licensed Tattooists and the NSWPF. Respondents were able to specifically request their submissions not be published.

DCJ received four submissions from industry participants requesting the repeal of the Act. Industry participants raised concerns regarding the lack of transparency and consistency observed in the licensing process.

A number of submissions also discussed the negative impact the regulatory scheme has had on licensees. One stakeholder commented that the scheme places NSW tattooists at a competitive disadvantage to unlicensed operators and those from other jurisdictions, due to the quantum of fees and operational requirements imposed on them.

Some stakeholders raised that business insurance premiums had risen abruptly in response to the 'high-risk' characterisation placed on the tattoo and body art industry. Submissions questioned whether there would be any changes reflected in business insurance premiums if the regulation of tattoo parlours is deemed successful with the removal of organised crime from the industry.

Other issues canvassed by stakeholders include operators who also work as tattooists being unfairly tied to working in a single workplace and being required to pay for two separate licences.

More generally, a number of submissions reflected on whether a tattoo licence should mean more than the successful passing of a probity assessment and identification check. For example, submissions considered whether public interest would be better met if a licence served as an indicator that a parlour is compliant with public health requirements. In the same vein, it was noted that perhaps artists should be required to demonstrate evidence of some level of training prior to being granted a licence to undertake body art tattooing.

Industry representatives broadly indicated they would not support any mandatory skill requirements, however, there appeared to be consensus that compliance with public health requirements could be a licensing pre-requisite.

A number of submissions noted concerns of a growing 'backyard tattooing' scene since the industry was first regulated. Stakeholders indicated that backyard tattooing is often advertised via social media and is likely driven by individuals who were originally refused a tattoo licence or those who did not apply suspecting they would be refused. The NSWPF submission echoed this concern, flagging that OMCGs may view this as a business opportunity.

A number of the submissions also raised concerns regarding the regulation of tattooists visiting from overseas. Currently, the Act provides for visiting overseas artists who work at a convention to also be able to work elsewhere in NSW for a period of up to 31 days. This was an amendment made in response to concerns that without such an opportunity, overseas tattooists, who are often well-known and considered a draw card, would bypass NSW given the lack of a wider opportunity to work across locations in the state.

However, stakeholders interpreted this requirement as meaning any overseas artist visiting NSW must attend a private convention, and in effect provide the artist's financial support to private, for-profit events.

Findings of the Review

Continuation of the regulation and licensing of the Tattoo Industry

Some stakeholders submitted there is no need for continuing regulation of the tattoo industry. For example

> *… a degree of criminality continues to exist… these crimes are not occurring to a large enough extent to warrant a licensing of the entire industry in NSW.* - Australian Tattooist Guild

However, as the social acceptance of the tattoo and body art industry in Australia continues to grow, maintaining public confidence in and reducing criminal activity associated with the industry is paramount. It will be difficult for the NSW Government to maintain public confidence in the industry by upholding industry safeguards and standards, if those who have previously been excluded from the industry were free to return.

The NSWPF has reported a significant decrease in criminal infiltration of the industry since 2012 which can be directly attributed to the regulation of the industry. This is protecting legitimate business owners from being unfairly affected by organised criminal groups.

The number of new entrants into the tattoo and body art industry is larger than was predicted when the industry was first regulated. The increased numbers of additional participants suggest they have confidence working in the industry.

We do not agree with the arguments that it is in the public interest to end the regulation of the industry.

As the NSW Civil and Administrative Tribunal stated in *Smith v Commissioner of Police, NSWPF & NSW Fair Trading* [2014] NSWCATAD 184:

> *Entry to the industry is restricted by the licensing scheme in order to protect the public interest by diminishing the likelihood of criminal activity within the industry.*

The NSWPF submission states that:

> *OMCG involvement in the NSW tattoo industry has been reduced as a result of being refused on the grounds of adverse security determinations. A number of license applications that continue to be made suggests that the industry is now attracting new entrants who may previously have been deterred by OMCG involvement.*

Recommendation 1
The regulation and licensing of the tattoo and body art industry continue through the *Tattoo Parlours Act 2012* and Tattoo Parlours Regulation 2013.

Agency responsibilities under the *Tattoo Parlours Act 2012*

The *Tattoo Parlours Act 2012* is jointly administered by the Minister for Police and Emergency Services, and the Minister for Better Regulation and Innovation. DCS is the regulator of the NSW tattoo and body art industry, whereas NSWPF is responsible for industry compliance and enforcement of the legislation.

Feedback received from industry stakeholders suggests the joint administration has in part hampered the efficiency of the licensing process. Stakeholder submissions indicate the current arrangements have resulted in some confusion and uncertainty for applicants and licence holders looking to meaningfully engage with Government in relation to the licensing scheme. Moreover, two submissions highlight the time it takes for some clearances to be done, in their case, taking up to 4 years.

Some stakeholders noted a preference for regulation through the DCS:

> *If a licence is deemed necessary, it should be handled by Fair Trading, not NSWPF – Anonymous.*

DCS and NSWPF propose the best way forward would be for the NSWPF to assume full responsibility for the licensing scheme under the Act. The NSWPF submission states that "A single regulator with responsibility for all functions under the Act would result in simplified, consistent and more effective administration". This would mean that in addition to its current responsibilities, the Commissioner of Police would assume the role of decision-maker under the Act.

Dealing solely with one agency rather than two separate agencies will provide greater efficiency and clarity in the licensing process and address some concerns raised in submissions. The NSWPF regulates other industries where law enforcement has concerns in relation to criminal infiltration or misuse, most notably the private security, scrap metal and firearms industries. As such, the NSWPF is well-placed to regulate the NSW tattoo industry.

Recommendation 2
NSWPF become the sole administrator of the scheme.

Licensing of tattooists and licensing of tattoo businesses

A number of submissions commented on the licensing requirements within the industry. A small number proposed that tattoo businesses and owners remain subject to licensing requirements with individual artists being exempted.

One submission proposed owners or operators should be responsible for background checks on employees and sub-contractors. Others also argue that while individual artists should be required to have appropriate training, a requirement to have separate licences to work in different locations is inhibiting professional mobility within the industry.

The NSWPF submitted that tattoo artists should continue to be subject to licensing requirements, thereby ensuring OMCG and other criminal groups do not seek to infiltrate the industry. They submit that "Effective compliance and enforcement are required to protect legitimate business operators from being unfairly undercut by organised crime groups."

We agree that to protect the integrity of the scheme, all tattoo and body art industry participants should remain licensed under the scheme.

Recommendation 3
All tattoo and body art industry participants continue to be required to be licensed in NSW.

Prohibiting OMCG members from obtaining a tattoo licence

Section 11(4) of the Tattoo Parlours Act 2012 provides that a controlled member of a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012* (NSW) ('CCOCA') may not apply for a tattoo licence. Section 16(3) provides that the Secretary must not grant a licence or licence renewal if the applicant is a controlled member of a declared organisation.

However, the Supreme Court has not made a declaration that an organisation is a criminal organisation under CCOCA due to the availability of more efficient legislative mechanisms.

Since 2011, other legislative mechanisms put in place to address serious and organised crime include: modernised consorting laws [3] and restricted premises legislation[4]; enhanced criminal group participation and drive-by shooting offences; greater police powers to enforce Firearms Prohibition Orders; Serious Crime Prevention Orders[5]; and Public Safety Orders[6].

This means that when police consider whether a licence or licence renewal should be refused on the basis of membership of an OMCG, they cannot rely on section 11(4) of the Act and must undertake a lengthy process to gather sufficient evidence about the OMCG and the applicant's links to it.

In order to streamline this process, we propose that the Act include a regulation making power to prescribe OMCGs, the membership of which would be the basis for mandatory refusal of a licence or a renewed licence. Consequently, it is proposed that the Act be amended to provide that the Secretary must not grant or renew a licence if the applicant is a member of a listed OMCG or was a member in the last 12 months.

We propose the list of OMCGs included in clause 98(2)(a) of the Liquor Regulation 2018 (this was previously 53N(2)(a) of the Liquor Regulation 2008) ('Exclusion of persons from subject premises') be mirrored for this purpose. This list was developed in conjunction with the NSWPF and is updated regularly based on police intelligence.

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[3] See: *Crimes Amendment (Consorting and Organised Crime) Act 2012*
[4] See: *Firearms and Criminal Groups Legislation Amendment Act 2013*
[5] See: *Crimes (Serious Crime Prevention Orders) Act 2016*
[6] See: *Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016*

Advice of the Commissioner of Police would be required to add a new organisation to the list.

In recognising a person may claim to have left a prescribed organisation in order to gain a licence under false pretenses, we recommend that the Act provide that 'the Secretary must not grant or renew a licence' if an applicant has been a member of a prescribed organisation in the 12 months prior to the submission of the application.

The NSWPF would investigate any claim by an applicant that they have not been a member of a prescribed organisation in the 12 months prior to the submission of their application and assess any ongoing risks as a result of the applicant's previous membership.

NCAT would retain the ability to review the question of an applicant's membership of a prescribed criminal group, but not whether the group itself was unsuitable for purposes of the Act.

If amended as proposed, the Act would provide greater transparency for licensing decisions, and streamline licence adjudications and process times.

Recommendation 4
The *Tattoo Parlours Act 2012* be amended to provide that membership of an organisation prescribed in the Regulation is a mandatory ground for refusal when applying for or renewing a tattoo licence in New South Wales, and to require the advice of the NSW Commissioner of Police prior to prescribing an organisation in the Regulation.

Inclusion of mandatory disqualifying offences

The decision to not include a set of mandatory disqualifying offences into the *Tattoo Parlours Act 2012* was intended to provide the licensing regime with sufficient discretion to give existing industry participants a reasonable chance of obtaining a licence. The Second Reading speech states:

> *This bill provides for the Commissioner of Police to conduct investigations into licence applicants and licensees to ensure that only fit and proper persons are granted and able to hold such licences… the Commissioner of police is not required to give any reasons for making a determination and recommendation that an applicant or licensee is not a fit and proper person…*[7]

For example, given the long-term criminal infiltration of the industry, it was likely many industry participants had previously worked for or associated with people with criminal records.

However, in practice this flexible approach appears to have added complexity in the way that security determinations are assessed. Consequently, in some cases, licence applicants have waited a long time to receive a decision on their licence application.[8]

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[7] NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 3 May 2012, Anthony Roberts, Minister for Fair Trading

[8] Section 27(2) of the *Tattoo Parlours Act 2012* provides for a 'deemed refusal' of a licence application or renewal, which would then allow a person to apply to the NSW Civil and Administrative Tribunal, however it is understood that this has to date not been utilised.

This delay is largely due to the complex process the NSWPF is required to undertake to support an adverse security determination made on the grounds of an individual's link to an OMCG.

While the Act allows applicants to continue to work in the industry until their application is determined, they cannot work at any other parlours. In such situations, individuals are not able to make long term decisions about their business or their future in the industry.

The following reasons were submitted by industry stakeholders for including a set of mandatory disqualifying offences in the Act:

- processing times for security determinations will be reduced and there would be a clear legislative basis for a decision to refuse a licence based on a person's criminal history
- ongoing monitoring of licensees' criminal histories would be simplified through this process
- the number of security determinations based on the subjective 'fit and proper' test and 'public interest' test would be reduced
- the number of appeals lodged with NCAT should be reduced, as more licensing decisions would be based on mandatory grounds.

From an industry perspective, including a set of mandatory disqualifying offences will provide greater transparency for industry participants, who will be able to better understand the scope of the probity test conducted on licence applicants.

Some submissions also suggested that the 'fit and proper person' test should be repealed. For example:

> *Setting mandatory disqualifying offences has the potential to replace the vague nature of the current 'fit and proper persons' test* – Australian Tattooist Guild

NSWPF submitted that the introduction of mandatory disqualifying offences would serve to reduce the time and administration required to assess each application. However, NSWPF propose that inclusion of mandatory disqualifying offences should not negate the need to continue to apply 'fit and proper' and 'public interest' tests because there is still an element of analysis or risk assessment required.

> *There is still a need to consider convictions for offences that are not mandatory disqualifying offences, in terms of seriousness, frequency, recency and context.*

NSWPF state that they should be able to continue using a 'public interest' test and criminal intelligence reports and other criminal information, as part of the process of conducting security determinations. Such information should continue to be protected from public disclosure.

We recommend the fit and proper person test remain in addition to the inclusion of mandatory disqualifying offences.

Recommended offences to be included as mandatory disqualifiers

Some submissions state:

> *Supported exclusions are: offences relating to firearms or weapons, sexual assault or rape, stalking or intimidation, affray, riot, reckless conduct causing death at workplace, offences involving organised criminal groups and recruitment, fraud, dishonesty or stealing, intent to kill, intent to inflict grievous bodily harm, or reckless indifference to human life* – Australian Tattooist Guild.
>
> *...only extremely serious crimes, such as murder/rape* –Licensed NSW and QLD Tattooist Group.
>
> *A clear definition of what disqualifies an individual from owning or operating a tattoo studio should be provided* – Licensed NSW Tattooists.

The equivalent legislative provisions in South Australia provide a precedent for determining the types of offences that may be included in a set of mandatory disqualifying offences in New South Wales. South Australia's *Tattoo Industry Control Act 2015* (SA) provides the Commissioner for Consumer Affairs may disqualify a person from providing tattooing services in the following circumstances:

- they were, at any time within the previous five years, a member of a prescribed organisation or a close associate of a member of a prescribed organisation (*as defined in South Australian legislation*)
- they have been found guilty, within the previous ten years, of a prescribed offence. This includes weapons and firearms offences, a serious and organised crime offence, a drug offence, an indictable offence involving violence, an attempt to commit, or assault with attempt to commit such an offence, or an equivalent offence in another jurisdiction.

NSWPF has suggested that offences which should be considered for inclusion as a mandatory disqualifier within the regulations, similar to s11(5) of the *Firearms Act 1996* and s16(1) of the *Security Industry Act 1997* (see Appendix 2).

Based on the NSWPF submission, we recommend the following offences be considered for inclusion as a mandatory disqualifier if convicted:

- firearms or weapons
- prohibited drugs
- serious violence
- robbery
- sexual offences
- organised criminal groups, consorting, recruitment and criminal activity
- money laundering
- riot, extortion, blackmail and arson

This should also include equivalent offences where the applicant has been convicted in other jurisdictions.

Consistent with the South Australian legislative scheme, and other legislative schemes such as the *Firearms Act 1996*, mandatory disqualifying offences could be prescribed in the regulations.

Recommendation 5
The *Tattoo Parlours Act 2012* be amended to provide that the Secretary must refuse a license if the applicant has been convicted of a prescribed offence, and include a regulation making power to prescribe offences

Visitor permits for non-Australian residents

Currently clause 4 of the *Tattoo Parlours Regulation 2013* provides an exemption from licensing requirements for 'tattooing shows' conducted under the authority of a permit.

The exemption covers 'authorised participants' of a show, defined as an individual:

- whose details have been provided to the Secretary (of DCS) by the permit holder for the show at least 14 days prior to the commencement of the show;
- who is found to be not 'unsuitable' and
- who has not, in the previous twelve months, been an authorised participant of more than one other show.

'Authorised participants' can also conduct body art tattooing procedures at licensed tattoo parlours so long as the following conditions are met (clause 4(6)):

- the individual is not an Australian citizen or Australian resident and
- the performance of a body art tattooing procedure for a fee or reward is not in breach of any visa condition of the individual and
- the individual has not, in the previous 12 months, performed body art tattooing procedures at premises in respect of which an operator licence is in force on more than 31 days in total and
- the individual, when performing body art tattooing procedures at any such premises, carries the following documents and promptly produces them if requested to do so by an authorised officer:
    i. the individual's passport;
    ii. written evidence showing the individual is an authorised participant in a show.

This exemption was made following representations made by show organisers who were concerned about the impact of the restrictions imposed through the licensing scheme on tattooing shows. The shows are run for profit and rely on high-profile 'drawcards' or big-name artists visiting from international jurisdictions.

Some feedback received from submissions to the Review indicated that the industry has interpreted the above provisions as the Government *forcing* tattoo industry participants from external jurisdictions to support private for-profit tattooing shows, in order to gain entry to the NSW industry:

> *The current requirement for overseas visiting tattooists to attend a convention in order to work in NSW does not reflect the culture of the industry. This has resulted in a dramatic drop in overseas tattooists visiting the State and has*

> *damaged trade and has restricted the usual sharing of both technical and artistic knowledge* – Australian Tattooist Guild.

Such an assumption can involve significant costs and is an undesirable and unintended policy outcome.

The industry has stressed the important role that visiting artists can play in upskilling NSW body art tattooists given the lack of a formal industry training regime. By contrast, the *Tattoo Industry Act 2013* (QLD) allows for visiting overseas tattooists to apply for permits which are not tied to any particular event. Section 43 of the Queensland Act for example provides:

> A permit granted under this division (a visiting tattooist permit) authorises the permit holder to perform body art tattooing procedures:
>
> (a) under the conditions of the permit; and
> (b) for the period stated in the permit.'

The Queensland legislation provides that applications for visiting tattooist permits can only be made by non-Australian residents over the age of 18 years and must be made at least 28 days before the proposed commencement date.

We agree that including a similar provision in the *Tattoo Parlours Act 2012* would be a beneficial and proportionate response to the concerns raised by industry stakeholders. Such a provision would ensure visiting overseas artists could access the local industry in a controlled way, which will not undermine the policy goals of the legislation.

Recommendation 6
Insert into the *Tattoo Parlours Act 2012* provisions based on sections 43 to 45 of the *Tattoo Industry Act 2013* (QLD) to provide for a limited duration visitor permit scheme for visiting overseas body art tattooists, which is not tied to attendance at any tattoo show or other industry event.

Training requirements and standards for licence applications

There are strong public health reasons to ensure all tattooists are adequately trained and compliant with legal requirements to act in a safe, hygienic and professional manner. NSW Health has regulatory responsibility for infection control practices at skin penetration premises. This is legislated under the *Public Health Act 2010* and Public Health Regulation 2012 which regulates body decorating and grooming practices carried out by unregistered health professionals. Under the Public Health Regulation 2012, all skin penetration providers must be publicly registered with the appropriate local government authority responsible for ensuring the premises adequately meets Council requirements and appropriate equipment and hygiene procedures are in place.

It is in the public interest to ensure all skin penetration businesses including tattoo parlours maintain strong compliance with public health requirements. This was emphasised by the submissions received by industry stakeholders:

> *I strongly support the inclusion of a condition requiring an applicant for a licence to provide evidence of existing skills and/or completion of an appropriate*

> *training program for infection disease control* – Richard Anthony, CEO of Eze Training Pty Ltd.
>
> *The current industry standard certification, HLTINFOO5 'Maintain infection prevention for skin penetration' (should) become a mandatory requirement for all NSW tattooists and visiting tattooists from other states* - Australian Tattooist Guild.
>
> *Make tattooing a recognised trade under the TAFE scheme utilising the learning and safe practices and procedure* – Glenn Fowler, independent tattooist.
>
> *Tattoo artists should need to show that they understand cross contamination risks associated with the job, they should prove that they understand the importance of a tidy workstation and sterilization etc. and most importantly they should have to prove that they work from a health department approved studio* - James Matthews, Skinblitz Tattoo, Cessnock.

We recognise the comments made by a number of submissions that consideration be given to requiring applicants of operator or tattooist licences in NSW to provide proof of having successfully completed vocational health training.

However, health training requirements are outside the scope of this Act.

As indicated in the Second Reading speech, this Act aims to protect the public from criminal gangs and criminal activity. Current health regulations are in place that seek to reduce the health risks associated with tattooing.

The public interest test under the Act is not intended to focus on the competency of those performing the service. Rather, its purpose is to address criminal matters that have been historically associated with the industry such as extortion, money laundering and personal violence.

Public health requirements are regulated by NSW Health under the *Public Health Act 2010* and Public Health Regulation 2012

Currently, the Act provides that the Secretary may refuse to grant or renew an operator licence if satisfied that a prohibition order under Part 3 of the *Public Health Act 2010* (NSW), in connection with the carrying out Division 4, of skin penetration procedures, is in force in respect of the proposed licensed premises or licensed premises.

Using a non-health related legislative mechanism such as the *Tattoo Parlours Act 2012* to reinforce public health standards may result in the industry not accurately reflecting changes to health standards in a timely manner.

We recommend the Act is not amended to introduce further licence conditions which relate to public health matters. These matters instead will remain appropriately regulated under the Public Health Act.

Recommendation 7
Public health requirements associated with the tattoo industry continue to be regulated under the Public Health Act and regulations.

Whole of government approach required to address 'backyard' tattooing

A recurring theme in submissions to this Review is the increase in unregulated 'backyard' body art tattooing in NSW. This may be a consequence of industry regulation since 2012, with individuals who have been refused a licence seeking opportunities to continue to offer their services. Interested parties usually seek these services via social media and online marketplace sites.

> *(we) would like to see a far greater level of policing aimed at backyard operators who are exposing the public to health and safety risks and who also avoid contributing to both the taxation system and the economy in general.* – NSW Licensed Tattooists.

> *These laws are not working, as it is pushing the tattooists. underground… advertising on Facebook/ Social Media to do tattooing at one's home* – Patsy Clarke, owner of Sharica Salon, Dubbo.

NSWPF report they have also uncovered such activity while attending properties for other reasons, such as serving warrants:

> *(NSWPF) have reported an increase in 'backyard' tattoo parlours. It is likely that these parlours are being operated by persons who have been refused a license or have not applied for a licence on the basis that it is likely to be refused under the Act.*

Such a development is a concern. Allowing an unregulated 'backyard' tattoo industry to grow could result in the widespread circumvention of the Act. It may also result in a resurgence of the types of risks and behaviours the licensing scheme was designed to address, for example OMCGs asserting control of the industry.

Unregulated skin penetration procedures represent a significant public health risk and contravenes the *Public Health Act 2010* (NSW). Section 38 of this Act provides the 'occupier of premises' where skin penetration procedures are carried out must comply with the requirements prescribed by the Regulations with respect to such premises. The maximum penalties for this offence are 100 penalty units in the case of an individual and 500 penalty units for a corporation.

We note the challenges of proving a 'backyard tattooing business' is being carried out or tattooing procedures are being performed for a 'fee or reward'.

In order to prevent backyard tattooing we recommend the Act be amended to prohibit the advertising of body art tattooing services without a current licence, including mentions of these services on social media platforms. This will assist NSWPF and local government authorities to effectively regulate this activity.

Cultural tattooing practices which occur within the spirit or ethos of a particular community or culture were not intended to be captured by the legislation. We do not consider they should be captured in the future including under this new amendment.

Recommendation 8
Insert into the *Tattoo Parlours Act 2012* a provision similar to section 32 of the *Security Industry Act 1997*, to prohibit the advertising of body art tattooing services unless the person or persons offering the services holds a current licence under the Act. This is to include any mention of un-licensed services on social media platforms.

Recognition of licences between jurisdictions

We note long-standing concerns raised by industry regulators about the impacts of mutual recognition principles on other industries such as the security industry:

> *[We] would support the cross recognition of other states tattoo licences subject to those states having similar systems to any legislative requirements that are in place in NSW at the time* – NSW Licenced Tattooists.
>
> *The Act restricts tattooists from outside of NSW from entering the state freely, thus limiting trade within the profession* – Australian Tattooists Guild.
>
> *We support in our submission the acceptance of licences issued in other states… on the requirement that the other state apply a comparable due diligence in the issuing of licences* – Chikarovski and Associates on behalf of InkMe Australia.

The *Mutual Recognition Act 1992* (Cth) entitles those holding an occupational licence or registration in one state or territory to an equivalent licence in another state or territory, provided the work is licensed in both jurisdictions.

Currently interstate body art and tattoo artists seeking to work in NSW must apply for a licence. The Service NSW website advises that if a person applies for a tattooist licence in NSW under mutual recognition, they must complete both the application for a tattooist licence and the Notice for Registration of Equivalent Occupation.

Licensing of participants in the tattoo and body art industry is not carried out in all Australian states and territories. Victoria, Western Australia, the ACT, Tasmania and the Northern Territory do not have licensing schemes for their respective tattoo and body art industries.

The South Australian scheme is a negative licensing scheme, in that no licence is required to enter the occupation or industry, but those who fall into one or more of three categories: a member of a prescribed organisation; a close associate of a person who is a member of a prescribed organisation or is subject to a control order; or are disqualified from providing tattooing services under a law of the Commonwealth or another state or territory.

When first passed, Queensland's *Tattoo Parlours Act 2013,* now the *Tattoo Industry Act 2013*, was modelled in large part on the New South Wales Act. In 2017 significant changes were made to the Queensland legislation including removing the requirement for the Queensland Commissioner for Police to make security determinations on applications or licensees. The process is now conducted through Queensland Fair Trading.

The NSW body art and tattoo industry is largely affected by current mutual recognition principles. For example, new applicants or entrants to the industry all have the potential to be affected by unregulated schemes in certain states, and the different operational schemes in South Australia and Queensland.

Industry submissions raised mixed issues in relation to mutual recognition. The NSW Licensed Tattooists noted they support cross-recognition of licences, subject to those states having similar systems to NSW legislative requirements. Additionally, the Australian Tattooists Guild submitted the restriction on free access to NSW from artists based in other jurisdictions is a limitation on trade and restricts the sharing of professional knowledge.

We recommend no changes to cross-jurisdictional recognition of licences in light of the operation of the *Mutual Recognition Act 1992* (Cth), and the different regulatory schemes in South Australia and Queensland.

Better engagement with NSW industry participants

Many of the submissions received by the Review raised concerns regarding the lack of transparency in the licensing process and the need for clearer and responsive communication between Government and the NSW body art and tattoo industry.

Reforms proposed through this Review, if supported, will in part provide more transparency and responsiveness in the licensing process. However, we note that current provisions designed to protect criminal intelligence and other criminal information held by the NSWPF will remain in the Act. This will mean that certain grounds for some licensing decisions will remain excluded from release to individuals who are refused a licence.

Some suggestions made through the submission process required further consultation, review and analysis with industry and other local and state government stakeholders. For example, a submission was received seeking amendment to the Act to allow for the licensing of 'mobile tattoo parlours'. These are vehicles that provide body art tattooing services based on pre-booked appointments.

We recommend additional work be undertaken to integrate industry consultation into the licensing process. This would provide an opportunity for industry representatives to regularly bring to the attention of the Regulator any concerns or any changes in the organisation of the industry which are likely to impact on the regulatory scheme. This might involve formal or electronic/online meetings conducted regularly in the same way as the NSWPF convenes the Security Industry Advisory Council.

Recommendation 9
A mechanism be established to conduct regular, practical consultation with the tattoo and body art industry in NSW.

Renaming the Principal Act

Several industry stakeholders have proposed the principal Act be renamed the Tattoo Industry Act to remove the community bias associated with the term 'parlour'. We agree with the value of the change in promoting the higher professionalism of the industry achieved over the past six years.

Recommendation 10
The principal Act be renamed the *Tattoo Industry Act* and the regulation to be renamed the Tattoo Industry Regulation.

Stakeholder proposals for other changes to the licensing scheme

Submissions to the Review proposed that a single licence number be assigned to each licensee to limit the requirement for records, stationery and advertising to be updated at the time of each licence renewal.

Some submissions noted the financial and paperwork impost of updating licence numbers that change at the time of licence renewal.

We note operator licences should remain tied to a particular premise as currently provided for under section 6(2) of the Act. Additionally, an individual and their premises would retain different licence numbers which recognise the distinct activities being licensed.

We agree that in the interest of reducing business red tape a single licence number apply to each licensee where appropriate.

Recommendation 11
A single licence number be assigned to each licensee where appropriate.

Appendix 1 – List of submissions to the Review

Submission number	Author / Organisation
1	Law Society of NSW
2	Liverpool City Council
3	Brenton Eldridge on behalf of the Professional Tattooing Association of Australia Inc
4	NSW Licensed Tattooists
5	Confidential
6	Richard Anthony on behalf of Eze Training
7	Australian Tattooist Guild
8	NSWPF
9	Chikarovski and Associates and Ink Me
10	Glen Flower
11	James Matthews on behalf of Skinblitz Tattoo, Cessnock
12	Corey Foxton
13	Alan Mitchell
14	Todd Healey
15	Trudy London
16	Patsy Clarke
17	Christian Llewellyn Rand on behalf of Licensed NSW tattooists

Appendix 2 – NSWPF submission on mandatory qualifying offences

1. Offences relating to firearms or weapons
An offence relating to the possession or use of a firearm, or any other weapon, committed under:
(i) the law of any Australian jurisdiction, or
(ii) the law of any overseas jurisdiction (being an offence that, had it been committed in Australia, would be an offence under the law of an Australian jurisdiction), and being an offence that would (had the offence been committed under the law of an Australian jurisdiction) disqualify the person concerned from holding a licence under the *Firearms Act 1996*.

2. Offences relating to prohibited drugs etc
An offence in respect of the supply or manufacture of a prohibited plant or prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or a prescribed restricted substance within the meaning of the *Poisons and Therapeutic Goods Regulation 2008*, in respect of which the maximum penalty imposed is any term of imprisonment, or a penalty of $500 or more, or both, being an offence committed under:
(i) the law of any Australian jurisdiction, or
(ii) the law of any overseas jurisdiction (being an offence that, had it been committed in Australia, would be an offence under the law of an Australian jurisdiction).

3. Offences involving personal violence or assault
An offence committed under the law of any Australian or overseas jurisdiction, being:
(i) an offence involving the infliction of actual bodily harm upon a person in respect of which the penalty imposed was imprisonment for 28 days or more, or a penalty of $200 or more, or both, or
(ii) an offence involving kidnapping or abduction, or
(iii) an offence involving stalking or intimidation, or
(iv) an offence of attempting to commit, threatening to commit or conspiring to commit an offence referred to in subparagraphs (i)-(iii).
(v) an offence involving assault of any description, where the applicant concerned has been found guilty of an offence that, in the opinion of the Commissioner, is a serious assault offence.

4. Offences involving robbery
An offence under the law of any Australian or overseas jurisdiction involving robbery (whether armed or otherwise).

5. Offences relating to riot
An offence under section 938 of the *Crimes Act 1900* or any similar *offence* under the law of another jurisdiction.

6. Extortion or Blackmail
An offence under the law of any Australian or overseas jurisdiction related to extortion or blackmail (Part 4B *Crimes Act 1900*)

7. Offences involving organised criminal groups and recruitment
An offence under section 93T or 351A of the *Crimes Act 1900* or any similar offence under the law of another jurisdiction.

8. Offences involving participation in a criminal group
An offence of participating in a criminal group under Division 5 of Part 3A of the *Crimes Act 1900* or any similar offence under the law of another jurisdiction.