

South Australia

Tattooing Industry Control Act 2015

An Act to regulate the tattooing industry; to prevent criminal infiltration of the tattooing industry; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Providing tattooing services
- 5 Criminal intelligence
- 6 Commissioner for Consumer Affairs to be responsible for administration of Act

Part 2—Regulation of providers of tattooing services

- 7 Automatic and permanent disqualification from providing tattooing services
- 8 Commissioner for Consumer Affairs may disqualify person from providing tattooing services
- 9 Service of disqualification notice
- 10 Variation or revocation of disqualification notice by Commissioner for Consumer Affairs
- 11 Offence to allow disqualified person to provide tattooing services

Part 3—Authorised officers may direct providers of tattooing services etc

- 12 Authorised officers may direct persons

Part 4—Information gathering and reporting

- 13 Providers of tattooing services etc to provide certain information to Commissioner for Consumer Affairs
- 14 Employees to provide certain information to Commissioner for Consumer Affairs
- 15 Commissioner for Consumer Affairs may require information
- 16 Record keeping

Part 5—Appeal

- 17 Appeal

Part 6—Enforcement and further offences

- 18 Authorised officers
- 19 Powers of authorised officers
- 20 Further powers of police officers—general drug detection
- 21 Offence to possess certain items in premises where tattooing services provided
- 22 Further powers of police officers—random weapon and explosive searches

Part 7—Miscellaneous

- 23 Exemptions
- 24 False or misleading information
- 25 Commissioner of Police may provide information to Commissioner for Consumer Affairs
- 26 Statutory declaration
- 27 Offences by bodies corporate
- 28 Service
- 29 Evidentiary provision
- 30 Regulations

Schedule 1—Related amendments

Part 1—Amendment of *Second-hand Dealers and Pawnbrokers Act 1996*

- 1 Amendment of section 3—Interpretation
- 2 Insertion of section 5A
 - 5A Criminal intelligence
- 3 Amendment of section 6—Disqualification from carrying on business as second-hand dealer
- 4 Insertion of section 6A
 - 6A Further powers of Commissioner of Police to disqualify person from carrying on business as second-hand dealer
- 5 Amendment of section 27—Regulations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Tattooing Industry Control Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

close associate—see subsection (3);

Commissioner for Consumer Affairs means the Commissioner for Consumer Affairs under the *Fair Trading Act 1987* or the person for the time being acting in the office of Commissioner for Consumer Affairs;

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

director of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

prescribed organisation—the following are prescribed organisations:

- (a) a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*;
- (b) a criminal organisation within the meaning of Division 1 or Division 2 of Part 3B of the *Criminal Law Consolidation Act 1935*;
- (c) any other organisation prescribed by the regulations for the purposes of this definition,

and a reference to a **member** of such an organisation is to be construed in accordance with the relevant Act;

tattoo means to insert into or through the skin any colouring material designed to leave a permanent mark.

- (2) For the purposes of this Act, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.
- (3) For the purposes of this Act, 2 persons are **close associates** if—
 - (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or
 - (c) they are in partnership; or
 - (d) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (e) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
 - (f) 1 is in a position to exercise control or significant influence over the conduct of the other.

4—Providing tattooing services

- (1) For the purposes of this Act, a person **provides tattooing services** if—
 - (a) in the case of a natural person—he or she—
 - (i) tattoos another person (whether or not for fee or reward); or

- (ii) carries on a business in the course of which he or she or another person tattoos a person (whether or not for fee or reward); or
 - (iii) is a director of a body corporate that carries on a business in the course of which he or she or another person tattoos a person (whether or not for fee or reward); or
 - (iv) sells or supplies, or offers to sell or supply, prescribed tattooing equipment to a person; or
 - (v) provides any other service of a kind prescribed by the regulations for the purposes of this paragraph; or
 - (b) in the case of a body corporate—the body corporate—
 - (i) carries on a business in the course of which a person tattoos another person (whether or not for fee or reward); or
 - (ii) is a close associate of a body corporate that carries on a business in the course of which a person tattoos another person (whether or not for fee or reward); or
 - (iii) sells or supplies, or offers to sell or supply, prescribed tattooing equipment to a person; or
 - (iv) provides any other service of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) For the purposes of this section, a reference to supplying prescribed tattooing equipment does not include a reference to the mere delivery of prescribed tattooing equipment by Australia Post, a courier or a similar carriage service.

- (3) In this section—

prescribed tattooing equipment means the following equipment (however described) used, or to be used, in tattooing a person:

- (a) a tattoo machine or tattoo gun;
- (b) needles;
- (c) ink or other colouring material;
- (d) any other equipment prescribed by the regulations for the purposes of this paragraph.

5—Criminal intelligence

- (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Commissioner for Consumer Affairs, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If the Commissioner for Consumer Affairs—
- (a) disqualifies a person from providing tattooing services under Part 2 or refuses to revoke a disqualification under Part 2; and
 - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the Commissioner for Consumer Affairs is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest if the person were to provide tattooing services.

- (3) In any proceedings under this Act, the court determining the proceedings—
 - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

6—Commissioner for Consumer Affairs to be responsible for administration of Act

The Commissioner for Consumer Affairs is responsible, subject to the control and directions of the Minister, for the administration of this Act.

Part 2—Regulation of providers of tattooing services

7—Automatic and permanent disqualification from providing tattooing services

- (1) A person must not provide tattooing services if the person is disqualified from providing tattooing services under this section.
Maximum penalty:
 - (a) in the case of a natural person—imprisonment for 4 years; or
 - (b) in the case of a body corporate—\$250 000.
- (2) A natural person is disqualified from providing tattooing services if he or she—
 - (a) is a member of a prescribed organisation; or
 - (b) is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
 - (c) is disqualified from providing tattooing services (however described) under a law of the Commonwealth or another State or Territory; or
 - (d) is a person, or is a person of a class, prescribed by the regulations for the purposes of this subsection.
- (3) A body corporate is disqualified from providing tattooing services if—
 - (a) the body corporate—
 - (i) is a prescribed organisation; or

- (ii) is disqualified from providing tattooing services (however described) under a law of the Commonwealth or another State or Territory; or
 - (b) a director of the body corporate is disqualified from providing tattooing services under subsection (2); or
 - (c) is a body corporate, or is a body corporate of a class, prescribed by the regulations for the purposes of this subsection.
- (4) A person is disqualified from providing tattooing services whether the events referred to in subsection (2) or (3) occur—
- (a) before or after the commencement of this section; or
 - (b) before or after the person commences providing tattooing services.

8—Commissioner for Consumer Affairs may disqualify person from providing tattooing services

- (1) Without limiting section 7, the Commissioner for Consumer Affairs may, by notice in writing (a *disqualification notice*), disqualify a person from providing tattooing services if—
- (a) the person was, at any time within the 5 preceding years, a member of a prescribed organisation; or
 - (b) the person was, at any time within the 5 preceding years, a close associate of a member of a prescribed organisation; or
 - (c) the person is found guilty, or has within the preceding 10 years been found guilty, of an offence prescribed by the regulations for the purposes of this section; or
 - (d) the Commissioner for Consumer Affairs reasonably believes that such action is appropriate for the purpose of averting, eliminating or minimising a risk, or a perceived risk, to the safety of members of the public; or
 - (e) the Commissioner for Consumer Affairs reasonably believes that to allow the person to provide tattooing services, or to continue to provide tattooing services, would otherwise not be in the public interest.
- (2) A disqualification notice has effect from the date specified in the notice and continues in force—
- (a) indefinitely; or
 - (b) for the period specified in the notice; or
 - (c) until the notice is revoked in accordance with this or any other Act,
- whichever is the sooner.
- (3) A person who contravenes or fails to comply with a disqualification notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a natural person—imprisonment for 4 years; or
- (b) in the case of a body corporate—\$250 000.

- (4) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the disqualification notice or was reckless as to that fact.
- (5) Subject to this section, a disqualification notice given by the Commissioner for Consumer Affairs—
 - (a) must state the grounds on which the notice has been given; and
 - (b) must contain a statement advising the recipient that he or she is entitled to appeal against the Commissioner for Consumer Affairs decision to give the notice in accordance with section 17; and
 - (c) must contain such other information as may be required by the regulations.
- (6) A statement of the grounds on which a disqualification notice has been issued must not contain information that is classified by the Commissioner for Police as criminal intelligence (however a failure to comply with this subsection does not invalidate a disqualification notice).

9—Service of disqualification notice

- (1) Subject to the making of an order under subsection (3), a disqualification notice must be served on the recipient personally and is not binding on the recipient until it has been so served.
- (2) If a police officer has reason to believe that a person is subject to a disqualification notice that has not been served on the person, the officer may—
 - (a) require the person to remain at a particular place for—
 - (i) so long as may be necessary for the notice to be served on the person; or
 - (ii) 2 hours,whichever is the lesser; and
 - (b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).
- (3) If a police officer satisfies a court that all reasonable efforts have been made to effect personal service of a disqualification notice on a recipient in accordance with this section but that those efforts have failed, the court may make such orders as it thinks fit in relation to substituted service (and the notice is not binding on the recipient until it has been so served).

10—Variation or revocation of disqualification notice by Commissioner for Consumer Affairs

The Commissioner for Consumer Affairs may, at any time, vary or revoke a disqualification notice by notice in writing to the recipient.

11—Offence to allow disqualified person to provide tattooing services

- (1) A person who carries on a business in the course of which tattooing services are provided must not allow a person who is disqualified under this Act from providing tattooing services to provide tattooing services in the course of that business.

Maximum penalty:

- (a) in the case of a natural person—imprisonment for 4 years; or
 - (b) in the case of a body corporate—\$250 000.
- (2) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that he or she believed on reasonable grounds that the person who provided tattooing services in contravention of that subsection was not disqualified under this Act from providing such services.

Part 3—Authorised officers may direct providers of tattooing services etc

12—Authorised officers may direct persons

- (1) An authorised officer may give a direction under this section to a person who provides tattooing services for the purpose of averting, eliminating or minimising a risk, or a perceived risk, to the safety of members of the public.
- (2) A direction under this section—
- (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom the direction is given (whether by name or by a description sufficient to identify the person); and
 - (c) may direct 2 or more persons to do something specified in the notice jointly; and
 - (d) without limiting any other provision, in the case of a direction that relates to the condition of any premises, may be given to any person who—
 - (i) is the owner or occupier of the premises; or
 - (ii) has the management or control of the premises; and
 - (e) must state the purpose for which the direction is given; and
 - (f) may impose any requirement reasonably required for the purpose for which the direction is given, including 1 or more of the following:
 - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from an authorised officer;
 - (ii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;
 - (iii) a requirement that the person take action to prevent, eliminate, minimise or control any specified risk to the safety of members of the public; and

- (g) must contain a statement advising the person to whom the direction is given that he or she is entitled to appeal against the decision to give the direction in accordance with section 17.
- (3) A person to whom a direction is given under this section must not, without reasonable excuse, refuse or fail to comply with the direction.
Maximum penalty:
 - (a) in the case of a natural person—\$100 000 or imprisonment for 1 year; or
 - (b) in the case of a body corporate—\$250 000.

Part 4—Information gathering and reporting

13—Providers of tattooing services etc to provide certain information to Commissioner for Consumer Affairs

- (1) A person who proposes to commence carrying on a business in the course of which tattooing services are provided must give the Commissioner for Consumer Affairs written notice in accordance with this section.
Maximum penalty:
 - (a) in the case of a natural person—\$100 000 or imprisonment for 1 year; or
 - (b) in the case of a body corporate—\$250 000.
- (2) A person who—
 - (a) on the commencement of this section is carrying on a business in the course of which tattooing services are provided; or
 - (b) after the commencement of this section commences to carry on a business in the course of which tattooing services are provided,must give the Commissioner for Consumer Affairs written notice in accordance with this section.
Maximum penalty:
 - (a) in the case of a natural person—\$100 000 or imprisonment for 1 year; or
 - (b) in the case of a body corporate—\$250 000.
- (3) A notice under subsection (1) or (2)—
 - (a) must be given in a manner and form determined by the Commissioner for Consumer Affairs; and
 - (b) must be given—
 - (i) in the case of a person referred to in subsection (1)—at least 90 days before commencing to carry on the business; or
 - (ii) in the case of a person referred to in subsection (2)(a)—within 28 days after the commencement of this section; or
 - (iii) in the case of a person referred to in subsection (2)(b)—within 28 days after commencing carrying on the business; and
 - (c) must include—
 - (i) in the case of a body corporate—

- (A) the name of the body corporate and any business or trading name under which the body corporate is to provide tattooing services; and
 - (B) the registered address of the body corporate; and
 - (C) the full name, residential address and date of birth of each director of the body corporate; and
- (ii) in the case of a natural person—his or her full name, residential address and date of birth; and
 - (iii) in any case—
 - (A) the address of any premises at which tattooing services are to be provided by or on behalf of the person; and
 - (B) the full name, residential address and date of birth of any other person employed by the person to provide tattooing services; and
 - (C) such other information as may be required by the regulations.
- (4) A person required to give notice under this section must, within 14 days of any change in the information referred to in subsection (3), notify the Commissioner for Consumer Affairs of the changed information.

Maximum penalty:

- (a) in the case of a natural person—\$100 000 or imprisonment for 1 year; or
 - (b) in the case of a body corporate—\$250 000.
- (5) A notice under subsection (4) must be given in a manner and form determined by the Commissioner for Consumer Affairs.

14—Employees to provide certain information to Commissioner for Consumer Affairs

- (1) A person must, within 28 days of commencing employment (whether paid or unpaid) in the course of which he or she provides tattooing services, notify the Commissioner for Consumer Affairs that he or she is so employed.

Maximum penalty: \$100 000 or imprisonment for 1 year.

- (2) A notice under subsection (1)—
- (a) must be given in a manner and form determined by the Commissioner for Consumer Affairs; and
 - (b) must contain the information required by regulations.

15—Commissioner for Consumer Affairs may require information

- (1) The Commissioner for Consumer Affairs may, by notice in writing, require a person whom he or she reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to provide to him or her such information as may be specified in the notice.
- (2) Information required under a notice must be provided in the manner and form, and within the period, specified in the notice.

- (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).

Maximum penalty: \$100 000 or imprisonment for 1 year.

16—Record keeping

- (1) A person carrying on a business in the course of which tattooing services are provided must keep such records as may be required by the regulations.

Maximum penalty:

- (a) in the case of a natural person—\$100 000 or imprisonment for 1 year; or
(b) in the case of a body corporate—\$250 000.

Expiation fee: \$10 000.

- (2) A record required to be kept by a person under this section must be kept for a period of not less than 2 years.

Maximum penalty:

- (a) in the case of a natural person—\$100 000 or imprisonment for 1 year; or
(b) in the case of a body corporate—\$250 000.

Expiation fee: \$10 000.

Part 5—Appeal

17—Appeal

- (1) A person who is dissatisfied with a decision of the Commissioner for Consumer Affairs, or a direction of an authorised officer under section 12, may appeal to the Administrative and Disciplinary Division of the District Court against the decision or direction.
- (2) Subject to subsection (3)(b), an appeal must be instituted within 28 days of the making of the decision or direction appealed against.
- (3) Subject to section 5—
- (a) the Commissioner for Consumer Affairs or authorised officer (as the case requires) must, if so required by the appellant, state in writing the reasons for the decision or direction appealed against; and
- (b) if the reasons of the Commissioner for Consumer Affairs or authorised officer are not given in writing at the time of the decision or direction (as the case requires) and the appellant (within 1 month of the decision or the direction) requires the Commissioner or authorised officer to state the reasons in writing, the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.

Part 6—Enforcement and further offences

18—Authorised officers

- (1) The following persons are authorised officers for the purposes of this Act:
- (a) the Commissioner for Consumer Affairs;

- (b) police officers;
 - (c) authorised officers under section 76 of the *Fair Trading Act 1987*;
 - (d) a person, or a class of persons, authorised by the Commissioner for Consumer Affairs to be an authorised officer for the purposes of this Act.
- (2) An authorisation under subsection (1)(d) may be made subject to conditions or limitations specified in the instrument of authorisation.
- (3) An authorised officer under subsection (1)(d) must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer under this Act.
- (4) If the powers of an authorised officer under subsection (1)(d) have been limited by conditions, the identity card issued to the authorised officer must indicate those limitations.
- (5) An authorised officer (other than a police officer in uniform) must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this Act, produce for inspection his or her identity card or other evidence of his or her authority.
- (6) The Commissioner for Consumer Affairs may, by notice in writing to the authorised officer, vary or revoke an authorisation under subsection (1)(d), or a condition or limitation of such an authorisation, on any grounds he or she thinks fit.

19—Powers of authorised officers

- (1) An authorised officer may—
- (a) enter and remain in or on any premises, place or vehicle that the officer reasonably suspects is used for, or in connection with, the provision of tattooing services (and, if entry is refused, may employ such force as is reasonably necessary to gain entry); and
 - (b) inspect or search the premises, place or vehicle or any equipment or other thing on the premises, place or vehicle; and
 - (c) inspect any records kept by a person whom the authorised officer reasonably suspects of providing tattooing services and, for that purpose, require the person, or an employee or agent of the person, to produce the records; and
 - (d) examine, copy or take extracts from such records, or require the person, or an employee or agent of the person, to provide a copy of the records; and
 - (e) remove and retain such records for so long as is reasonably necessary for the purpose of making a copy or extract of the record; and
 - (f) seize and remove anything that constitutes evidence of an offence against this Act.
- (2) An authorised officer may not exercise the power of entry conferred by this section in relation to residential premises except—
- (a) with the consent of the occupier of the premises; or
 - (b) on the authority of a warrant issued by a magistrate under this section; or

- (c) if there are reasonable grounds to suspect that the premises are used on a continuing or regular basis for, or in connection with, the provision of tattooing services.
- (3) A magistrate may issue a warrant for the purposes of this section if satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.
- (4) An authorised officer may, in exercising a power under this section, be accompanied by such assistants as may reasonably be required in the circumstances.
- (5) A person who—
 - (a) hinders an authorised officer in the exercise of powers under this Act; or
 - (b) refuses or fails to comply with a requirement made under this section,is guilty of an offence.
Maximum penalty: \$5 000.

20—Further powers of police officers—general drug detection

A police officer may carry out general drug detection under the *Controlled Substances Act 1984* in relation to premises that the police officer reasonably suspects are being used to carry on a business in the course of which tattooing services are provided (and, for the purposes of the *Controlled Substances Act 1984*, such premises will be taken to be an area to which section 52A of that Act applies).

21—Offence to possess certain items in premises where tattooing services provided

- (1) A person who has possession of a prescribed item in premises used to carry on a business in the course of which tattooing services are provided is guilty of an offence.
Maximum penalty: Imprisonment for 2 years.
- (2) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that he or she did not know, and could not reasonably have been expected to have known, that the relevant premises were, at the relevant time, used to carry on a business in the course of which tattooing services are provided.
- (3) In this section—
prescribed item means—
 - (a) a firearm (within the meaning of the *Firearms Act 1977*); or
 - (b) explosive (within the meaning of the *Explosives Act 1936*); or
 - (c) a dangerous article, offensive weapon or prohibited weapon (within the meaning of Part 3A of the *Summary Offences Act 1953*); or
 - (d) any other item prescribed by the regulations for the purposes of this definition.

22—Further powers of police officers—random weapon and explosive searches

- (1) A police officer may carry out a random weapon and explosive search in relation to premises that the police officer reasonably suspects are being used to carry on a business in the course of which tattooing services are provided.

- (2) A police officer may, in carrying out a search under this section, do 1 or more of the following:
- (a) enter and remain in the premises;
 - (b) inspect or search the premises, any person on the premises and any equipment or other thing on the premises;
 - (c) examine any substance, equipment or device;
 - (d) take and remove from the premises samples of any substance or goods;
 - (e) carry out tests;
 - (f) take photographs or films or make audio or audiovisual records;
 - (g) if the officer suspects on reasonable grounds that an offence against this Act has been committed, seize and remove from the premises anything that the officer has reasonable cause to suspect affords evidence of the offence;
 - (h) give such directions as are reasonably necessary for, or incidental to, the effective exercise of the officer's powers under this section.
- (3) Nothing in this section authorises a police officer to conduct or require an intimate search, an intrusive search or an intimate intrusive search of a person.
- (4) A police officer may, in exercising powers under this section, use a detection dog, a metal detector or an electronic detection system.
- (5) Nothing in this section limits any powers a police officer may have under the *Firearms Act 1977*, the *Explosives Act 1936*, the *Summary Offences Act 1953* or any other Act or law.
- (6) In this section—

detection dog means a dog that has completed training of a kind approved by the Commissioner of Police for the purpose of detecting the presence of firearms or explosive;

electronic detection system means—

- (a) an electronic device of a kind approved by the Commissioner of Police; or
- (b) a system, of a kind approved by the Commissioner of Police, that involves the use of an electronic device,

for the purpose of detecting the presence of firearms or explosive;

intimate intrusive search means an intrusive search of the rectum or vagina;

intimate search means a search of the body that involves exposure of, or contact with the skin of, the genital or anal area, the buttocks or, in the case of a female, the breasts, and includes an intimate intrusive search;

intrusive search means an internal search involving the introduction of anything into a bodily orifice.

Part 7—Miscellaneous

23—Exemptions

- (1) The Minister may, by notice in the Gazette, grant exemptions from this Act or specified provisions of this Act—
 - (a) to a person, or persons of a class, specified in the notice; or
 - (b) in relation to tattooing services, or tattooing services of a class, specified in the notice.
- (2) An exemption under subsection (1) may be granted by the Minister on conditions specified by the Minister.
- (3) The Minister may, at any time, by further notice in the Gazette—
 - (a) vary or revoke an exemption; or
 - (b) vary or revoke a condition of an exemption, or impose a new condition, on any grounds the Minister thinks fit.
- (4) Before granting an exemption, or varying or revoking an exemption or condition of an exemption, the Minister must consult with the Commissioner for Consumer Affairs and the Commissioner of Police.

24—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty:

- (a) in the case of a natural person—\$100 000 or imprisonment for 1 year; or
- (b) in the case of a body corporate—\$250 000.

25—Commissioner of Police may provide information to Commissioner for Consumer Affairs

Without limiting any other Act or law that requires or authorises the Commissioner of Police to disclose information, the Commissioner of Police may disclose to the Commissioner for Consumer Affairs any information on any matter relevant to the operation or enforcement of this Act.

26—Statutory declaration

If a person is required to provide information to the Commissioner for Consumer Affairs, the Commissioner for Consumer Affairs may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been so verified.

27—Offences by bodies corporate

- (1) If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) The regulations may make further provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

28—Service

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act (other than a disqualification notice under section 8) may—
 - (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address; or
 - (c) be left for the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
 - (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

29—Evidentiary provision

- (1) In proceedings for an offence against this Act, an allegation in the complaint or information—
 - (a) that a person named in the complaint or information is or is not, or was or was not on a specified date, disqualified from providing tattooing services; or
 - (b) that a specified person is or is not, or was or was not on a specified date, an authorised officer,

will be accepted as proved in the absence of proof to the contrary.

- (2) In any legal proceedings, a document apparently certified by the Commissioner for Consumer Affairs to be a notice or other document issued under this Act, or to be a copy of such a notice or other document, will be accepted as such in the absence of proof to the contrary.

30—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) exempt a person or person of a class, or a tattooing service of a class, from the operation of a provision or provisions of this Act;
 - (b) require persons who provide tattooing services to comply with a specified code of conduct or practice;
 - (c) require persons who provide tattooing services to lodge periodic returns;
 - (d) incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time;
 - (e) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
 - (f) impose a penalty, not exceeding a fine of \$10 000, for contravention of, or non-compliance with, a regulation;
 - (g) fix expiation fees, not exceeding \$1 000, for alleged offences against the regulations;
 - (h) make provisions of a savings or transitional nature.
- (3) The regulations may—
- (a) be of general application or limited application;
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply;
 - (c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a specified class) specified by the regulations;
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified person or body.
- (4) If a code or standard is referred to or incorporated in the regulations—
- (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
 - (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

Schedule 1—Related amendments

Part 1—Amendment of *Second-hand Dealers and Pawnbrokers Act 1996*

1—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *pawnbroker* insert:

prescribed organisation and *member of a prescribed organisation* have the same meanings as in the *Tattooing Industry Control Act 2015*;

- (2) Section 3—after subsection (2) insert:
- (3) For the purposes of this Act, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.
 - (4) For the purposes of this Act, 2 persons are *close associates* if—
 - (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or
 - (c) they are in partnership; or
 - (d) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (e) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
 - (f) 1 is in a position to exercise control or significant influence over the conduct of the other.

2—Insertion of section 5A

After section 5 insert:

5A—Criminal intelligence

- (1) If the Commissioner of Police—
 - (a) disqualifies a person from commencing or continuing to carry on business as a second-hand dealer under Part 2, or refuses to revoke a disqualification under that Part; and
 - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,the Commissioner of Police is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest if the person were to carry on business as a second-hand dealer.
- (2) In any proceedings relating to this Act, the court determining the proceedings—
 - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner of Police by way of affidavit.

3—Amendment of section 6—Disqualification from carrying on business as second-hand dealer

- (1) Section 6(1), penalty provision—delete "\$2 500" and substitute:

Imprisonment for 2 years
- (2) Section 6(2)—after paragraph (b) insert:
 - (ba) is a member of a prescribed organisation; or
 - (bb) is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
 - (bc) is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory; or
 - (bd) is a person, or is a person of a class, prescribed by the regulations for the purposes of this subsection; or
- (3) Section 6(3)(a)(i)—after subparagraph (ii) insert:
 - (iii) is a prescribed organisation; or
 - (iv) is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory; or
 - (v) is a body corporate, or is a body corporate of a class, prescribed by the regulations for the purposes of this subsection; or
- (4) Section 6(3)(b)—after subparagraph (iii) insert:

or

 - (iv) is disqualified from commencing to carry on business as a second-hand dealer under subsection (2); or
 - (v) is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory.

4—Insertion of section 6A

After section 6 insert:

6A—Further powers of Commissioner of Police to disqualify person from carrying on business as second-hand dealer

- (1) Without limiting section 6, the Commissioner of Police may, by notice in writing, disqualify a person from commencing or continuing to carry on business as a second-hand dealer if—
 - (a) the person was, at any time within the 5 preceding years, a member of a prescribed organisation; or
 - (b) the person was, at any time within the 5 preceding years, a close associate of a member of a prescribed organisation; or

- (c) the person is found guilty, or has within the preceding 10 years been found guilty, of an offence prescribed by the regulations for the purposes of this section; or
 - (d) the Commissioner of Police reasonably believes that to allow the person to commence or continue to carry on business as a second-hand dealer would otherwise not be in the public interest.
- (2) A disqualification notice has effect from the date specified in the notice and continues in force—
 - (a) indefinitely; or
 - (b) for the period specified in the notice; or
 - (c) until the notice is revoked in accordance with this or any other Act,whichever is the sooner.
- (3) A disqualification notice—
 - (a) must state the grounds on which the notice has been given; and
 - (b) must contain a statement advising the recipient that he or she is entitled to appeal against the decision to give the notice in accordance with subsection (7).
- (4) The Commissioner of Police may, at any time, vary or revoke a disqualification notice by notice in writing to the recipient.
- (5) A person who contravenes or fails to comply with a disqualification notice is guilty of an offence.
Maximum penalty: Imprisonment for 2 years.
- (6) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the disqualification notice or was reckless as to that fact.
- (7) A person who is disqualified under this section from carrying on business as a second-hand dealer may apply to the Administrative and Disciplinary Division of the District Court for an order removing the disqualification as if the disqualification were a disqualification under section 6.

5—Amendment of section 27—Regulations

Regulation 27(3)—after paragraph (c) insert:

- (d) make provisions of a savings or transitional nature.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
2015	44	<i>Tattooing Industry Control Act 2015</i>	10.12.2015	1.7.2016 (<i>Gazette</i> 2.6.2016 p2000)