



*SUBMISSION FOR  
REVIEW OF THE  
TATTOO PARLOURS  
ACT 2012 NSW*

INFORMATION AND RECOMMENDATIONS SUBMITTED  
BY THE AUSTRALIAN TATTOOISTS GUILD (ATG)

**AUGUST 2017**



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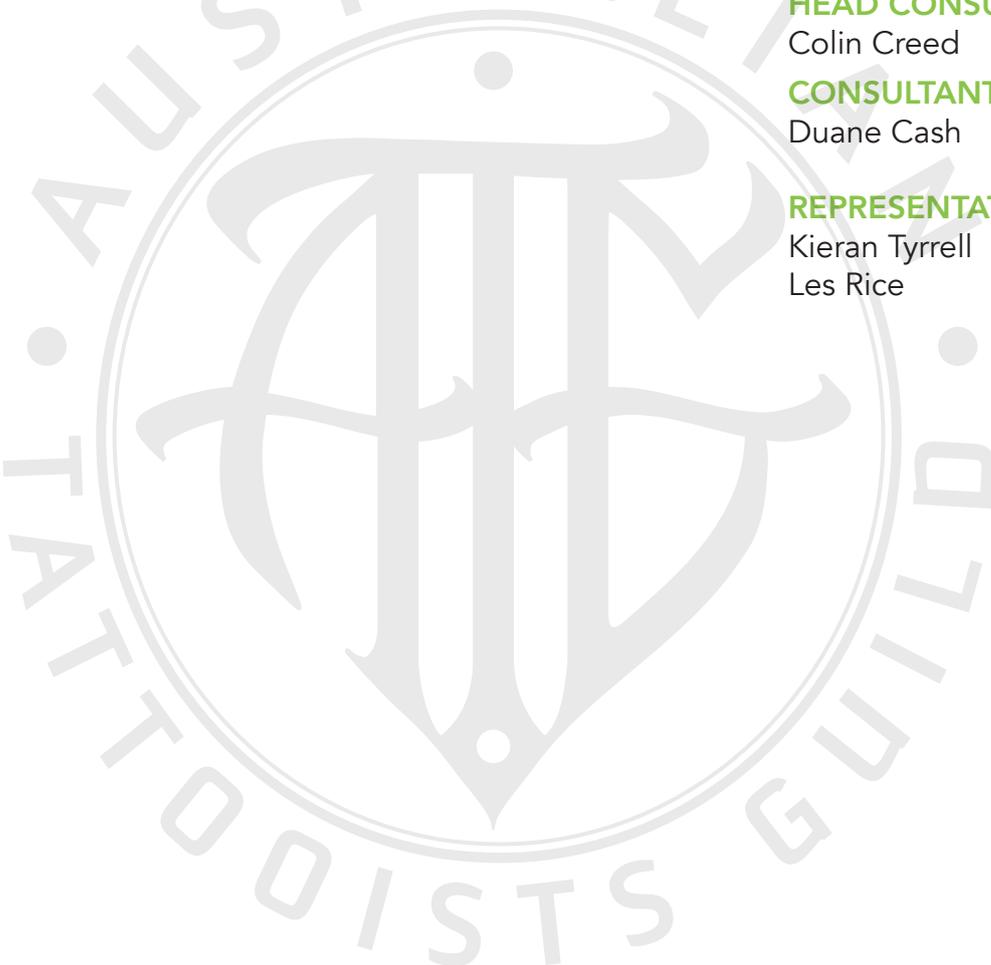
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## I. EXECUTIVE SUMMARY

The Australian Tattooists Guild (ATG) is a registered not for profit organisation formed by a group of professional tattooists in 2013 in response to the implementation of the *Tattoo Parlours Act 2012* in NSW. Since this time the ATG has grown to include a membership of professional tattooists, business members and supporters from all over Australia. The ATG requires its members to adhere to a code of conduct and a set of industry standards that maintain a high level of professional practice in the Australian tattoo industry.

The ATG thank the NSW Justice Department for this opportunity to provide a submission that will inform this important review of current legislation. The association supports efforts made by Government to curb criminal elements that may exist within, or in relation to, the tattoo industry and the wider community. However, we ask that the NSW government consider the advice and recommendations of this submission when drafting legislation that has the potential to unfairly or unnecessarily inhibit or constrain the working practices of tattoo artists, complicate their business practices and livelihood and potentially threaten the future of this unique industry.

In previous advice and reports submitted to government the ATG have significantly objected to the principal policy objectives of the *Tattoo Parlours Act* and have stated that any amendment legislation directed at the industry should make the health standards, sustainability and wellbeing of industry its principal objective. As a spokesperson for its members the ATG are very clear in its objection to the current legislation. It is the Association's belief that the *Tattoo Parlours Act 2012* has damaged the industry and should be repealed; industry consultation should occur prior to and during the drafting and development of any potential new regulation aimed at the industry.

In this submission we offer information to government in aid of a clear assessment and understanding of the concerns the industry has with the current regulatory regime. We also outline alternative structures that have been developed in consultation with our members for government consideration. This submission includes a set of proposals and summary recommendations that are supported by our members and have been developed in rigorous consultation with them. We believe these ideas are viable for government, law enforcers and industry and should inform policy and the review of legislation. Our advice can be summarised as follows:

- 1.1 The ATG submits that the policy directives of the *Tattoo Parlours Act NSW 2012* and the *Amendment Act 2017* are inconsistent with the contemporary business practices of the tattoo industry and currently offer little value for all stakeholders including members of the industry, consumers, law enforcers and government.

- 1.2 The ATG object to the running of the Act in its current form. Furthermore if a repeal were to be considered the ATG would support this move.
- 1.3 Data available from the current licensing regime indicates that the *Tattoo Parlours Act NSW 2012* has been unsuccessful in enhancing public safety or preventing and dismantling organised crime.
- 1.4 The ATG submit that any amendments to the legislation governing the tattoo industry should be evidence based.
- 1.5 The ATG submit that any regulation directed toward the industry should be based in health and safety competencies.
- 1.6 The ATG recommend that all industry participants should hold the current industry standard certification HLTINFOO5 'Maintain infection prevention for skin penetration treatments' and that this important certification be a requirement for entry to industry under the Act.
- 1.7 The ATG recommend that consideration be given to the re-naming of the *Tattoo Parlours Amendment Act* as the *Tattoo Industry Bill*.
- 1.8 The ATG are in favor of the parts of the Act that amend the licensing administration in order to make it more streamlined.
- 1.9 The ATG are against restraints to trade potentially incurred by the Act.
- 1.10 The most contentious point for the ATG in regards to the *Tattoo Parlours Act 2012* is its inaccurate description of the professional tattooing industry as one that is riddled with criminal activity. This assumption lacks evidence and has been damaging for the industry.
- 1.11 The ATG are seriously concerned about breaches of fundamental legislative principals within the Act as well as a lack of judicial review. We are concerned over the deployment of criminal intelligence and its potential infringement of natural justice, and it's potential to breach the rights enshrined within Article 6 of the International Covenant on Economic, Social and Cultural Rights to which Australia is a signatory.
- 1.12 The ATG submit that the *Tattoo Parlours Act NSW 2012* has damaged both the integrity and sustainability of the tattoo industry through the lack of legitimate pathways for entry into the industry. We feel this has led to a new threat to both the industry and to the general public in the form of amateurs gaining licensure to operate.

- 1.13 The ATG feels that industry participants are burdened by excessive record keeping obligations as well as restrictions, which require out of state tattooists to obtain full licensure in order to work between states.
- 1.14 The ATG has serious concerns regarding the powers the *Tattoo Parlours Amendment Act 2017* grants to police to bypass the checks and balances that ordinarily apply to police investigations. By granting powers to investigate close associates, the Act extends the existing regulatory scheme in a manner that appears to breach Article 17 of the International Covenant on Civil and Political Rights (ICCPR).
- 1.15 The ATG considers the Act to be a potential abrogation of the privilege against self-incrimination because of the limitations it places on safeguards for a person to object to supplied information being used against them. This too appears to breach Article 14 of the ICCPR.
- 1.16 The ATG holds general concerns regarding the lack of evidence gathered to support the 2017 Amendment Act as well as the lack of industry consultation that transpired during its passing.
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## 2. BACKGROUND AND CONTEXTS

### 2.1 Overview

The tattoo industry globally is in a period of growth. Some professional tattooists recognise the potential benefits that industry regulation could provide. Appropriate regulation has the potential to support the industry whilst also enhancing public safety by strengthening health practices in the industry. In Australia, the tattoo industry is at a critical juncture as some state governments aim to regulate the industry under the false assumption that a high level of criminality exists within the industry.

The implementation of the *NSW Tattoo Parlours Act 2012* with its focus on the monitoring of crime has significantly affected the working practices and culture of the profession. Since the introduction of the Act a growing number of government and independent reports indicate that organised crime does not operate to the extent initially presumed by governments in the tattoo industry. Statistics from the Department of Fair Trade NSW who administer the Act indicate that only a small percentage of applicants for licensure were denied since the inception of the regulatory regime (see figure 1). These statistics support the tattoo industry's ongoing request that government review the structure of the current regime and, in doing so, consult further with industry in order that a more workable and less invasive structure may be developed, one that will add value for all stakeholders.

Figure 1

	A	B	C	D	E	F
1		Applications lodged	Application refused by NSW Fair Trading	Applications to appeal decision lodged with NCAT	Decisions overturned by NCAT	Denied because of outlaw biker connections/ associations
2	<b>Operator</b>	465	49	31	10	Not held by DFSI
3	<b>Tattooist</b>	1550	64	25	5	Not held by DFSI

In this submission the ATG presents the results of consultation with its professional members for the NSW government to use when considering the appropriate measures that will ensure that the tattoo industry remains free from criminal activity whilst also maintaining public health and safety and the sustainability of this unique industry.

### 2.2 The Alleged Presence of Organised Crime in the Industry

Because the tattoo industry evolved in Australia predominantly through an interest from Organised Motorcycle Clubs (OMCs) from the mid 1970s onwards, the tattoo art form has to some extent retained a reputation that is linked with criminal practices. However, interest from OMCs in the practice of tattooing has significantly diminished

over the last decade as individuals who display a genuine interest in tattooing as an art form and profession have joined the industry.

The ATG recognise that a degree of criminality continues to exist within the industry and that issues related to ownership of territory and extortion persist. In response to this the ATG submit that these crimes are not occurring to a large enough extent to warrant the licensing of the entire industry in NSW. Police agencies have sufficient powers under other legislation to identify and police existing or perceived criminal activity.

Despite these shifts in the industry the pervasive assumption of government has continued to be that a high level of criminality continues to exist in the tattooing industry and community. This mindset has informed legislation. It was illustrated recently during the second reading of the *Tattoo Amendment Act 2017* in Parliament when the member for Epping, Mr. Damien Tudehope said:

In 2012 the O'Farrell-Stoner Government could not sit back and allow the tattoo industry to be owned or controlled by outlaw bikie gangs. At that time tattoo parlours were either owned and operated by bikies or were forced to pay protection money to their local gang for the privilege of doing business in "their territory". I remind the House of some examples of activities of outlaw motorcycle gangs and their involvement with tattoo parlours.<sup>1</sup>

In response to MP Tudehope's comments the ATG assert that the phenomena of industry participants being approached by criminal groups to pay protection monies and/or being extorted continues to a lesser degree however than has been previously assumed.

Victoria Police has stated that Organised Motorcycle Gangs (OMGs) are involved in the tattoo industry in order to distribute amphetamine-type substances to a wide market.<sup>2</sup> In response to this the ATG speculates that participation in such activities may be conducted by small groups of individuals with distribution occurring out of random individual premises. These operations are unlikely to be linked to OMCs but rather to opportunistic ventures on the part of a small group of non-genuine operators.

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<sup>1</sup> Reference 5

<sup>2</sup> "Ombudsman recommends repeal of the Crimes (Criminal Organisations Control) Act 2012" Ombudsman NSW Website, 9 March 2017, [www.ombo.nsw.gov.au/news-and-publications/news/ombudsman-recommends-repeal-of-the-crimes-criminal-organisations-control-act-2012](http://www.ombo.nsw.gov.au/news-and-publications/news/ombudsman-recommends-repeal-of-the-crimes-criminal-organisations-control-act-2012), accessed June 10 2017.

### 3. NSW LEGISLATION

#### 3.1 The *Tattoo Parlours Act 2012*

On 3 May 2012 Mr. Anthony Roberts, Minister for Fair Trading, stated in his introduction of the Tattoo Parlours Bill to the NSW Parliament:

This bill is part of the Government's continued response to gang crime in New South Wales. It follows on from the *Crimes Amendment (Consorting and Organised Crime) Act 2012* and the *Crimes (Criminal Organisations Control) Act 2012*, which the Government brought before this House and the Parliament earlier this year. *The Tattoo Parlours Bill 2012* aims to break the stranglehold that outlaw motorcycle gangs have over the tattoo industry in New South Wales

The ATG submit that this analysis of the tattoo industry is incorrect. The vast majority of industry participants have no connections to OMCs. This is supported by data available from the Department of Fair Trade that tracks licensing. Information released under the Government Information Act 2009 since the inception of the licensing regime in 2012 shows that 465 Applications for operator licences were lodged. From among those 49 were refused by Fair Trading NSW. From those refused, 31 applications to appeal were lodged and 10 of these were overturned by NCAT. Information on whether these were denied because of an association with outlaw biker associations is not held or made available. Similarly, 1550 Applications for tattooist's licences were lodged. Of these, 64 of were refused by Fair Trading; 25 applications to appeal were lodged with NCAT and 5 of the refusals were overturned by NCAT .

According to the explanatory notes for the *Tattoo Parlours Bill 2012*:

The principle policy objective of the Bill is to introduce a new occupational licensing and regulatory framework which eliminates and prevents infiltration of the NSW tattoo industry by criminal organisations, including criminal motor cycle gangs and their associates.

The Act encompasses both legal and public policy principals that are complex and multifaceted. Despite this complexity many individuals, including Civil Liberties and Legal organisations, academics, industry participants, individuals and journalists have expressed concerns about elements of the Act.

### 3.2 The Tattoo Parlours Amendment Act NSW 2017

The *Tattoo Parlours Amendment Act NSW* was introduced by the Minister for Police and Emergency services, Mr. Troy Grant, to the NSW Parliament in March 2017. The Act received assent on 9 May 2017. No consultation with the ATG on behalf of the tattoo industry was sought during the drafting of this Bill. Because of this lack of consultation, the ATG has been compelled to comment on Minister Grant's comments in Parliament and those comments published on his website in order to develop an understanding of the policy direction being undertaken and its implications for industry.

Information has been sought by the ATG under the *Government Information (Public Access) Act 2009*. The information gathered indicates that the high level of criminality and organised crime purported to exist in the tattoo industry by the NSW government simply does not exist. Our analysis indicates that a problem exists with how the issue of organised crime within the tattoo industry has been framed by Minister Grant. It appears that Minister Grant is acting contrary to the evidence-based public policy making trend seen in other states in relation to the tattoo industry.

Minister Grant writes that:

After 22 years experience in the NSW Police Force, I know that tattoo parlours are commonly places heavily associated with organised crime and in particular outlaw motorcycle gangs.<sup>3</sup>

This statement is problematic for the following reasons because Mr. Grant's anecdotal experience does not constitute evidence-based research. If Mr. Grant's claim is in fact verifiable then research ought to demonstrate that "tattoo parlours are commonly places heavily associated with organised crime and in particular outlaw motorcycle gangs". Mr. Grant does not offer research or other evidence that demonstrates "tattoo parlours are commonly places heavily associated with organised crime and in particular outlaw motorcycle gangs" beyond his own personal experience.

The ATG submit that public policy cannot be fairly or effectively developed and implemented based on the assertions of a single individual. We feel that only evidence based policy changes should be developed.

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<sup>3</sup> "Troy's Column: The Tattoo Parlours Bill 2012", Troy Grant's Website, 29 May 2012, <[www.troygrant.com.au/troy-column/the-tattoo-parlours-bill-2012](http://www.troygrant.com.au/troy-column/the-tattoo-parlours-bill-2012)>.

The Amendments to the Act also imply that the NSW Police Force have had some difficulty investigating crime effectively. This implication is evidenced in the Act itself, which reduces the standards to include criminal intelligence being used against applicants that also cannot be disclosed to them during a hearing at NCAT if their application has been denied. The Tattoo Parlours Amendment Bill 2017 (NSW) states:

Section 27 (4) (a) Omit the paragraph.

Insert instead:

(a) is to ensure that it does not, in the reasons for its decisions or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information without the approval of the Commissioner"<sup>4</sup>

and

Section 27 (4A) Omit "identified in the Commissioner's determination as being from a criminal intelligence report or other criminal information referred to in this section 19 (3)".

Insert instead: "contained in a criminal intelligence report or other criminal information"<sup>5</sup>

Furthermore, the Act extends the existing regulatory scheme for the licensing of tattoo parlours from one of a 'fit and proper person' test for the operator, to one in which the same test has to be applied to both the operator and his or her close associates (see sections 19(1)(a1); 19(2)(a1))

The Act allows police to enter premises without a warrant (section 30A). The Act expands this power to:

Section 30C (1)(c1) make such examinations and inquiries as the authorised officer considers necessary

Normally, powers are to be exercised in a manner that is "reasonably necessary". This is an objective test that Courts frequently decide on; whether a fair-minded person in the position of the officer would take the same decision. That this 'reasonableness' characteristic has been omitted is significant; it means that the test is subjective. What did that authorised officer consider necessary?

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<sup>4</sup> "Mutual Recognition of licensed occupations", Licence Website, <[www.licencerecognition.gov.au/Mutual%20recognition/Pages/default.aspx](http://www.licencerecognition.gov.au/Mutual%20recognition/Pages/default.aspx)>.

<sup>5</sup> *Tattoo Parlours Amendment Bill 2017* (NSW).

Furthermore, the Bill removes a person's privilege against self-incrimination:

Section 33A

Insert after section 33:

33A Provisions relating to requirements to furnish records or information or answer questions

(2) Self-incrimination not an excuse

A person is not excused from a requirement under section 19A or 30C to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty<sup>6</sup>.

The inserted provision s. 33A (2) is a significant infringement on civil rights. Ss. 33A (1), (3), (4) and (5) indicate that a compromise has been reached with 'safeguards' that qualify the use of information gathered in criminal proceedings. However, one of the purposes of the licensing scheme is for the NSW police force to use the process to gather intelligence. Thus, the information gained is less likely to be admissible as evidence in criminal proceedings.

It is the function of the NSW police force to collect evidence and present that evidence to a court. If the Minister for Police had confidence in the ability of the NSW police force to execute its evidence gathering function, why would the standard need to be lowered? This addition of an arbitrary power appears to breach Article 17 of the International Covenant on Civil and Political Rights, which protects against arbitrary interference with privacy or correspondence.<sup>7</sup>

The Covenant to which Australia became a signatory in 1972 commits its parties to respect the civil and political rights of individuals, including rights to due process and a fair trial. Article 17 states that:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.<sup>8</sup>

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<sup>6</sup> *Tattoo Parlours Amendment Bill 2017* (NSW).

<sup>7</sup> Reference the International Covenant on Civil and Political Rights. Article 17(1) (f) The Law Society NSW open letter 29<sup>th</sup> May 2017.

<sup>8</sup> As above. Reference the International Covenant on Civil and Political Rights. Article 17(2) (f) The Law Society NSW open letter 29<sup>th</sup> May 2017.

The Act abrogates the privilege against self-incrimination by extending the requirement to provide further information during the execution of a warrant. It is an offence to obstruct, hinder or fail to comply with such a request.

The Act provides a limited safeguard in that:

Section 33A (4) if a person objects then the answer cannot be used against them.

The *Journal of the Australian Institute of Professional Intelligence Officers* published a peer-reviewed article by Author Ian Wing, which examines the use of evidence, and intelligence in modern day law enforcement. According to Wing:

Intelligence is also subject to the prejudices of its authors and the agendas of its customers. Intelligence, unlike evidence, is not based in legal principles or guidelines... [I]ntelligence can only be the "best estimate" of a given situation based on the available information, which will almost always be incomplete and often ambiguous.<sup>9</sup>

Wing argues that the use of intelligence rather than evidence to determine whether a person is a 'fit and proper person' to be licensed to operate a tattoo business in NSW, is to operate outside of ordinary law.

In an open letter regarding the *Tattoo Parlours Amendment Act 2017* to the Hon. Mark Speakman SC MP Attorney General dated 29 May 2017, the Law Society of NSW reiterated these concerns with the Act. An excerpt from the letter reads:

The Law society has serious concerns with the Act. While the legislation is limited to those involved in tattoo parlours, it gives police extraordinary powers, which bypass the safeguards applying to the Crime Commission and ordinary police investigations. The Law society has concerns about the precedent value of the provisions, particularly given that these significant powers, originally conceived for use in counter terrorism laws, have been incorporated into ordinary areas of criminal law enforcement and business regulation.

<sup>9</sup>

Ian Wing,(2004) "Maintaining Security with Justice: the Intelligence versus Evidence Dilemma", *Journal of the Australian Institute of Professional Intelligence Officers* 13: 1. 28-39. Available at <search.informit.com.au/documentSummary;dn=357608114803105;res=IELHSS> 1039-1525.

### 3.3 Analysis and Reports on the Act

A growing body of evidence has emerged that indicates that the methods being employed by governments to restrict members of criminal associations from participating in certain occupations are not working.

In order to assess the policy of the regime governing the tattoo industry in NSW and whether the direction taken within crime control legislation has been effective, a number of Government reports have been reviewed and referenced.

#### Review *Crimes (Criminal Organisations Control) Act 2012*

On 9 March 2017, acting NSW Ombudsman, Professor John McMillan, completed his review of the NSW police force's use of the *Crimes (Criminal Organisations Control) Act 2012*. The Act included a provision requiring the Ombudsman 'to keep under scrutiny the exercise of powers conferred on police officers under this Act' for the period of four years from the date of commencement of the ACT.

The Ombudsman's report contains only one recommendation: that the *Crimes Act 2012* be repealed: 'The *Crimes (Criminal Organisations Control) Act* was intended to enable police to restrict members of criminal associations from associating with each other, recruiting new members, and participating in certain occupations', said Professor McMillan. 'However, our review found that the Act does not provide police with a viable mechanism to do this. We think it is unlikely that police will ever be able to use it.' Professor McMillan added: 'in my view, given the problems identified by police that have prevented them from exercising the powers under this Act, and the fact that police have alternative powers to disrupt the activities of criminal organisations, it would be in the public interest for the Act to be repealed. I have made this the only recommendation in my report'.<sup>10</sup>

#### Report of Taskforce on Organised Crime Legislation 2016

The Taskforce on Organised Crime Legislation QLD ('the Taskforce') was established to review legislation introduced in Queensland in late 2013 as part of an extensive crackdown on organised crime. The Taskforce was required to refer to the findings of the Organised Crime Commission of Inquiry and the findings of the *Review of the Criminal Organisation Act 2009*.

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<sup>10</sup> "Ombudsman recommends repeal of the Crimes (Criminal Organisations Control) Act 2012" Ombudsman NSW Website, 9 March 2017, [www.ombo.nsw.gov.au/news-and-publications/news/ombudsman-recommends-repeal-of-the-crimes-criminal-organisations-control-act-2012](http://www.ombo.nsw.gov.au/news-and-publications/news/ombudsman-recommends-repeal-of-the-crimes-criminal-organisations-control-act-2012) pp. 319-20; 356. Accessed June 10 2017.

The Chair of the Taskforce, the Honourable Alan Wilson QC, former Supreme Court Judge, presented the final report of the Taskforce to the Attorney-General and Minister for Justice and Minister for Training and Skills on 31 March 2016. Similar to the findings made by the acting NSW Ombudsman in his review of the *Crime Control Act 2012*, the Taskforce made recommendations to repeal many of the amendments made to the *Police Powers and responsibilities Act 2000 (QLD) (3)*

The following recommendations were made in relation to the *Tattoo Parlours Act 2013*:

- Consideration needs to be given to renaming the *Tattoo Parlours Act 2013 (QLD)* to remove and replace the reference to the word 'parlour'. This was a unanimous recommendation.
- People should not be refused a license (or permit or approval or certificate) or have a license (or permit or approval or certificate) cancelled solely on the basis that they are alleged to be a participant in a criminal organisation. Licenses (etc.) should only be refused or cancelled on the basis that there is evidence specific to the individual that demonstrates that the individual (and not those with whom they associate with) is not a suitable person to hold a license (etc.). This was a unanimous recommendation.
- Extensive consultation must occur on an industry-by-industry basis to determine how best to frame the 'fit and proper person' applicable to each of the respective industries in recognition that what constitutes a 'fit and proper person' may differ significantly from industry to industry. This was a unanimous recommendation.
- The requirement that Chief Executives refer every application for a license to the Commissioner of Police requires a deployment of QPS and government resources that are disproportionate to the risk posed by the potential infiltration of organised crime groups to the respective industry, and to community safety. This requirement should be replaced with a mechanism that allows the Commissioner of Police to supply relevant information to the Chief Executive when a licensee comes to the attention of the QPS and, therefore, on a case-by-case basis only. This was a unanimous recommendation.

The unanimous findings and recommendations of this report appear to be significant for informing evidence based public policy formulation in NSW.

## **Report of the Victorian Law Reform Commission into Impacts of Organised Crime on Industries 2015**

In October 2014, the Victorian Government charged the Victorian Law Reform Commission with the task of reviewing the use of regulatory regimes to help prevent organised crime and criminal organisations infiltrating lawful occupations and industries. Through its consultation process the Commission sought to establish a deeper understanding of the efficacy of a range of regulatory tools and the costs and benefits of their use for regulators, business operators and other stakeholders. Based on its research and the fruits of its consultations, the Commission developed a framework of overarching principals for assessing the risks of organised crime and for developing suitable regulatory responses.

Chapter 2 (2.1) of the VLRC report, “Overarching principals” states that:

The following overarching principles should be considered in developing a regulatory response to organised crime infiltration of lawful occupations and industries:

1. The regulatory response should be specific to the occupation or industry at risk of infiltration.
2. A collaborative approach should be taken in responding to organised crime infiltration.
3. Government agencies should seek to maximise information sharing.
4. A regulatory regime should promote good administrative decision-making.
5. Government agencies should pursue nationally consistent best practice in regulatory responses.
6. A uniform concept of organised crime is necessary for effective regulatory responses.<sup>11</sup>

The ATG agrees with these principals.

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<sup>11</sup> VLRC Regulatory regimes Report, p. 8. Web address needed.

The VLRC report also states that:

Liberty Victoria cautioned that there would be, in fact, significant risk in adopting generalised regulatory responses to infiltration, insofar as a generic approach would disregard the different purposes for which particular occupations and industries are infiltrated, the different scales and characteristics of diverse occupations and industries, and the utility of any existing regulatory regimes within an occupation or industry. Liberty footnote 9 is here

As this report proposes, policy makers should tailor the regulatory response to organised crime infiltration by a) examining the particular form that infiltration takes in an occupation or industry and the specific opportunities and vulnerabilities that organised crime groups exploit; and b) considering the most beneficial regulatory strategies to reduce those opportunities and vulnerabilities.

In developing an occupation- or industry-specific regulatory response, it is important that policy makers both address the risks of organised crime infiltration and avoid undue impediments to the entry and operation of legitimate occupation/industry participants. In other words, the regulatory regime should endeavour to let the 'right' people in, as much as it seeks to keep the 'wrong' people out.

As noted at numerous points in this report, a well-functioning, flourishing legitimate business sector can help to marginalise illegitimate operators within a particular occupation or industry and make infiltration by organised crime groups more difficult.<sup>12</sup> Furthermore the ATG submit that members of a legitimate occupation or industry are unlikely to support regulatory measures that they perceive as unfair or lacking in credibility.

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<sup>12</sup> VLRC Regulatory regimes Report page 9. <http://www.lawreform.vic.gov.au/content/3-infiltration-organised-crime-groups-lawful-occupations-and-industries>

## **4. IMPACTS ON INDUSTRY**

### **4.1 Burden on License Administrators**

In its review the Taskforce received advice from various government departments and the Queensland Police that indicated that the 2013 suite has placed a significant regulatory burden on license administrators. The advice the Taskforce received from government departments was that the probity requirement for each individual has had a major impact on the timeliness and turnaround on individual applications (although the vast majority of applicants seeking a license were legitimate).<sup>13</sup> The Taskforce concluded that the allocation of resources required to conduct these stricter probity requirements was disproportionate to the risk posed to the community by organised crime legislation.

### **4.2 Restrictions**

The Tattoo Parlours Act 2012 restricts tattooists from outside of NSW from entering the state freely, thus limiting trade within the profession. This also limits the conferencing and sharing of professional knowledge. These restrictions, which are extended to tattooists visiting NSW from other countries, have had a profound effect on the professional community as many business owners have struggled to attract artists with large client bases from other states to work in their studios.

NSW is home to many industry leaders: prior to the introduction of the Act, it was perceived as a privilege by many within the profession to be invited to work in their studios. The cultural practice of the industry prior to the introduction of the regime was that out of state and international artists visited on multiple occasions during the year, often working in several studios and moving between states. In an industry that lacks accreditation this important practice is paramount to the continued growth and maintenance of standards within the industry and facilitates the sharing of knowledge. Burdened by what are perceived as excessive requirements, many interstate and overseas artists now choose not to visit NSW. The Act has restricted the sharing of knowledge and therefore damaged the industry.

### **4.3 Requirement for Visiting International Tattooists to Attend a Convention**

The current legislation requires overseas visiting tattooists to attend a convention in order to work within the state for a period of up to 31 days. The price of a booth at one of the two tattoo conventions currently operating in NSW is valued between \$1100.00 and \$4000.00. This added expense creates a substantial barrier to trade for many tattooists

<sup>13</sup> Taskforce on Organised Crime Legislation page 367. [http://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0017/463022/report-of-the-taskforce-on-organised-crime-legislation.pdf](http://www.justice.qld.gov.au/__data/assets/pdf_file/0017/463022/report-of-the-taskforce-on-organised-crime-legislation.pdf)

who wish to enter NSW. This requirement raises the following questions: Why is a visiting over seas artist required to attend a privately owned and operated convention? What role in the monitoring of organised crime groups does this requirement play? Are convention organisers put to the same scrutiny in regard to organised crime as those within the tattoo industry?

Many overseas visiting tattooists have no desire to attend a convention. It is perceived that this requirement benefits the private companies who operate conventions, and the Government who receives a fee from the convention permit. It does not provide any benefit to the industry. That the Act does not appropriately provide for visiting tattooists was identified by the Department of Justice and Attorney General in the QLD Taskforce report.<sup>14</sup>

#### **4.4 Licenses**

Existing legislation continues to demonstrate a distinct lack of awareness of the practice and culture of the tattoo industry.

*The Tattoo Parlours Act* allows for two types of licenses to be granted and held:

1. An operator licence; and
2. A tattooist licence.

An operator can also be a tattoo artist at his or her own premises and does not need to hold a separate tattooist license. A separate operator license is required to be held by the operator of each premise.

Unlike a tattooist license, an operator cannot work at other studios within NSW on an operator's license. If an operator wishes to work at another studio in NSW a tattooist's license must be applied for. Operators are therefore unfairly burdened by a requirement to obtain two separate licenses in order to work at other studios within the state. This policy does not reflect or support the practice of tattooists working at other studios within their home state.

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<sup>14</sup> Taskforce on Organised Crime Legislation page 373. [http://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0017/463022/report-of-the-taskforce-on-organised-crime-legislation.pdf](http://www.justice.qld.gov.au/__data/assets/pdf_file/0017/463022/report-of-the-taskforce-on-organised-crime-legislation.pdf)

At the time of writing a tattooist's license costs \$759.00 and an operator's license costs \$2,270.00. These are valid for 3 years. These costs present a considerable burden to small business owners who wish to work in other studios within the state. This license, which many perceive holds little to no value for industry participants, damages the cultural practices of the profession by inhibiting mobility. These mobile work practices reflect the movement and organisation of workers in numerous other industries – it is an impediment to livelihood that the work mobility of tattoo professionals would be inhibited in this way.

#### 4.5 Licensed Amateurs

Despite the tattoo industry having no accredited training regarding the technical aspects of the art form, it is broadly accepted that any individual who wishes to become professionally employed within the industry would first spend time working under an experienced tattoo artist in a professional, council-registered studio to gain the skills necessary to ensure that best practice is adhered to. This master-apprentice system has worked successfully and sustainably for many decades.

However, the industry is now experiencing many new tattoo businesses opening with amateur operators who have little to no experience or training who are licensed by the state. Throughout Australia, tattoo studios frequently encounter clients who have had work applied in registered premises by amateurs. The potential health risks for this practice are enormous and go beyond concerns of cross contamination alone. Inexperience and lack of integrity can lead to both physical and psychological problems for the client. This continues to be a major concern to both professional tattoo artists and the public alike.

#### 4.6 Mutual Recognition Arrangements

The nature of the industry and its professionals is movement and mobility; it was once not uncommon for artists to work at more than one studio, and often across various states at one time. Under the *Mutual Recognition Act 1992* mutual recognition arrangements are intended to improve the movement of labor and goods by allowing people registered to practice an occupation in one Australian jurisdiction an equivalent occupation in another provided the work is licensed in both.

The current model of recognition is an arrangement between NSW and QLD, with Tasmania being the only other Australian state to have a licensing requirement. However, because Tasmania's licensing system is tested on health practice based competency rather than criminality the Tasmanian state license is not recognised under mutual recognition agreements.

In order for license holders in NSW or QLD to make use of the arrangement they must first travel into the state where they seek the license and submit a full application for the tattoo license along with a mutual recognition form and full license fee. Applications under the mutual recognition agreement cannot be submitted online. If a license is granted it must be collected within the state that issued it.

The only benefit of the mutual recognition arrangement is that an individual can start work within the state he has applied to prior to the license being granted. The ATG submit that the current mutual recognition arrangements should be reviewed and that a more streamlined application process be implemented in order that tattooists do not need to travel to the state to collect their licenses. The ATG are of the view that a license obtained under mutual recognition arrangements should not incur a full license fee, but rather a lesser administrative fee. Applications considered under the mutual recognition arrangement are not scrutinised by police licensing so therefore should not incur the same fee. According to the Australian Government Department of Industry, Innovation and Science:

The basic principles of the MRA and TTMRA are the same. That is, a person licensed to practice an occupation in one participating jurisdiction can practice an equivalent occupation in another, without the need to undergo further testing or examination.<sup>15</sup>

If testing is not required, individuals should not have to pay the full licensing fee in order to obtain a license under this structure.

#### 4.7 Police Powers

Enforcement provisions currently allow police to enter licensed studios with sniffer dogs for the purposes of drug, fire arm or explosives detection without notification. The legal issues around these powers have been discussed in section 3.2 of this submission.

Tattoo studios are required under the *Public Health Act 2010* and State Health guidelines to maintain a sterile environment. An animal entering this environment would cause serious cross-contamination issues and could potentially interrupt the business of any tattoo studio that was being searched in this way for an extended period. The studio would have to be closed with clients asked to leave, potentially in the midst of being tattooed, whilst the entire studio was de-contaminated.

<sup>15</sup>

<http://www.licencerecognition.gov.au/Mutual%20recognition/Pages/default.aspx>

#### **4.8 Finger and Palm Prints**

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

Another problem bedeviling this part of the application process was the lack of notification to the police stations required to take fingerprints. This process stretches police resources and many applicants are repeatedly told they could not book a time at their local police station to have their prints taken—many are thus repeatedly turned away and experienced long waits of up to several hours occurred. There have been numerous reports of police officers completely unaware of the process required and needing to access the department’s website to confirm their role.

Police checks should provide interested agencies with all information they require. The industry recognises that as it is a requirement of applicants to consent to a full national police check in which any criminal conviction will become apparent. However, finger and palm printing is incongruent with the determination of whether an individual is a “fit and proper person”, and is also unnecessary and insufficient to prove exact identity unless the applicant has a prior conviction which is unlikely in the majority of applications. The ATG assert that these provisions are a potential breach of civil liberties and an unnecessary requirement for a tattoo artist and/or operator operating a small business venture. It is also perceived to be a waste of police resources.

#### **4.9 Lack of Infrastructure**

The lack of staff training in branches of the Department of Fair Trading (DFT) became apparent when it came to questions regarding the legislation and licensing scheme that were outside of the information listed on the DFT websites. Tattooists continue to deal with staff at the DFT who have a limited awareness of the application process and cannot provide answers to simple questions. This distinct lack of training for those attending to the applications means that very often applications are incorrectly processed or lengthy delays occur in the processing of applications due to information not being thoroughly inspected by the DFT officer.

There is a real lack of information and confusion in particular for the licensing of operators working under or within a company structure. Often the licensing agent gave several different answers because these situations had not been pre-empted even though these are standard small business operating structures. Given the substantial fines tabled for breach of the regulation in regard to appropriate licenses

being held by operators, this sort of confusion and mis-information leaves the small business operator at a real risk of extended loss of income through fines applied and closure of business in extreme cases.

Further issues have arisen due to the role of the Security Licensing & Enforcement Directorate (SLED) NSW Police determining probity within the licensing administration. Hold ups of over 12 months have not been uncommon for applicants. This situation is frustrating for both the applicant and for Fair Trading staff as SLED becomes uncontactable by applicants and often Fair Trade staff are unable to obtain updates on the timeframe or the progress of processing.

#### **4.10 Lack of Communication with Industry**

Another common complaint about the licensing process was a lack of notification about new laws, deadlines and necessary requirements. Relying on media that is fast becoming out of date, such as newspaper notification is an inefficient and ineffective way of circulating new information. No updates have been provided to either the ATG or individual licensees regarding any changes to the policy of the Act. This has meant that in certain circumstances police have had to withdraw fines due to licensees being uninformed about changes that have penalties attached, such as the amendments to overseas tattooists permits in 2016.

We submit that the most efficient method of notification of licensing regime changes and amendments would be local council, as all professional studios should be registered. It is however acknowledged that local government may not get involved with consultation and awareness for regulatory changes.

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

#### **4.11 Effect on Business Insurance**

Since the legislation has been introduced the majority of insurance companies who have historically provided cover for tattoo businesses have either terminated their contracts or refused to renew them. Tattoo studio owners have also had their leases terminated due to property owners not wanting to become liable for the large excess being asked by offshore insurers. It is now recognised that few Australian insurance companies will accept tattoo businesses as clients.

During conversations with insurance brokers held by the ATG it has been admitted that this lack of confidence in the tattoo industry is a direct result of legislation directed toward the industry—legislation that erroneously implies that a high level of criminal activity exists.

#### **4.12 Requirement to Display License Number**

Under division 24 of the *Tattoo Parlours Act 2012* it is a requirement for the licensee to display their license number on any advertising material.

24 (b) the license number is included in any advertisement relating to the body art tattooing business carried on at the licensed premises.

In November 2016 the ATG wrote to the Minister for Innovation and Better Regulation, Mr. Victor Dominello seeking clarification around the undefined term 'advertising material'. The response from the Minister was that the word 'has its ordinary meaning of being a promotion of goods or services through media. This would include business cards, social media, stickers, t-shirts and banners'.

The ATG submit that the requirement for license holders to include their license number on advertising materials such as t-shirts, stickers and banners is unnecessary and excessive. Many tattooists design and produce these materials regularly and distribute them via tattoo studios, online commerce and at tattoo shows.

At the time of writing, this issue has been compounded by the fact that Fair Trade is currently issuing renewal licenses with a completely new license number. This means that tattooists are now burdened with the financial cost of having to replace all existing advertising materials with new stock that displays a new license number.

#### **4.13 Record Keeping requirements**

Under division 41 of the primary Act the Governor is granted the power to make regulations that are not inconsistent with the Act.

41(g) The making, keeping and inspection of records in connection with the carrying on of body art tattooing business

License conditions imposed on operators by the Department of Fair Trade are:

- Make business financial records available for inspection by an authorised officer upon written request;
- Notify NSW Fair Trading of any changes in relation to their staff members, close associates or any other licence details, including if a licence has been lost, stolen or destroyed;
- Display the certificate of licence at the licensed premises in a visible location;
- Include their licence number in any advertising;
- Keep a logbook of all procedures performed on the premises. The log book must include the date/s when the procedure was performed, full name and licence number of the tattooist who performed the procedure, amount charged, method of payment and receipt number (if any).
- Keep all records in English at the licensed premises at all times, which must be readily accessible by an authorised officer upon written notice.
- The maximum penalty for not complying with a licence condition is \$2,200.

The ATG submit that the record keeping obligations being imposed on the operator are excessive and that no explanation has been publicly released that provides concrete evidence as to how these obligations play any role in helping government meet the policy objectives of the Bill. The Australian Taxation Office already holds substantial powers that would allow the inspection or audit of financial records required by taxation law, in light of this the ATG submit that excess record keeping requirements place an added and unnecessary burden on industry participants.

#### **4.12 Lack of Industry Consultation**

A lack of broad industry consultation has meant that damage has been done to both the culture and integrity of the profession through the implementation of policies that lack proper insight into the working practices of the industry. The industry was barely consulted during the drafting of the primary Bill and nor were the government departments responsible for the administration of the regime.

During a recent discussion within NSW Parliament the leader for the opposition, Mr. Guy Zangari stated:

We were surprised to learn that no industry consultation had been taken into consideration during the drafting of either the Tattoo Parlours Act 2012 or the proposed amendment bill before us today.<sup>8</sup>

The ATG has been acknowledged by state governments as an industry appropriate body since 2014. The organisation has been formally invited to attend and contribute to hearings and reports mounted by various state governments and yet no consultation was sought by the Minister of Police, Mr. Troy Grant, prior to or during the drafting of the Tattoo Parlours Amendment Bill 2017. The primary Tattoo Parlours Act has drawn criticism from legal stakeholders, industry representatives, parliamentary committees, media, academics, civil liberty groups and the general public.

The ATG strongly encourage MPs to engage and consult with industry. Legislators should engage in genuine consultation with stakeholders at the coalface.

#### **4.13 Suitable Regulation for the Tattoo Industry**

The ATG strongly advise that any regulation aimed at the tattoo industry must be based on a reasonable understanding of the qualities of a professional tattoo artist. The ATG submit that a fit and proper tattoo artist ought to be a person who:

- Is over the age of 18
- Possesses the requisite technical knowledge;
- Possesses requisite experience; and
- Possesses the requisite Occupational Health and Safety certifications.

In contrast, the *Tattoo Parlours Act NSW* states that a fit and proper person to work in the tattoo industry is either a. a person who is not a controlled person or b. a person who meets a loosely defined measure of probity. A significant disjuncture here exists between legislation and the recommendations of industry. The core and primary competencies for a person to be a fit and proper person to be employed in a tattoo business ought to be a person who is knowledgeable, and is certified to operate the business in conformance with Occupational Health and Safety.

## **5. ATG RECOMMENDATIONS**

### **5.1 Response to Justice Questions**

The following responses have been developed by the ATG in response to the questions raised by the Justice department:

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

The professional tattoo industry is mindful of the potential for legitimate business to be infiltrated by organised crime groups. A system of self-reporting supported by assurances from police agencies that information would be treated confidentially and investigated would serve as a means of reporting any contact from criminals from within industry.

#### **2. Should the Act set a list of mandatory disqualifying offences, as in, for example the Security Industry Act 1997?**

The ATG support a set list of mandatory disqualifying offences. Setting mandatory offences has the potential to replace the vague nature of the current 'fit and proper persons' test and may therefore benefit industry. However, a set list of mandatory disqualifying offences for use within the occupational licensing regime of the tattoo industry should reflect the characteristics of the profession itself. It should include, but not be limited to Health Code violations as defined under the Public Health Act 2010. The ATG recommends that a requirement for cross contamination certification be attached to the application process. It also recommends that any offences that disqualify individuals from entry to industry must have a set time frame within which the offence has occurred. Entrants should not be disqualified from their chosen career path as a tattoo artist unless the disqualifying offence is recent enough to complicate the potential for reform.

#### **3. If so, is a fit and proper person test still required?**

No. Mandatory disqualifying offences should satisfy government that individuals entering the industry have met a standard of probity that is suitable for employment within the tattoo industry. A fit and proper person test is no longer required.

#### **4. Should tattooists continue to be licensed under the scheme, or only parlours/operators?**

The licensing of operators as the sole license holders under the Act may benefit the industry if individual artists were permitted to move freely within the state, unencumbered by restrictions.

This proposition raises the following questions:

- What requirements would operators have to meet when employing tattooists to work in their studio?
- What impact would this system have on mutual recognition relationships with other states?

#### **5. What level of police enforcement is needed to keep the industry free of organised crime groups?**

Police agencies have sufficient powers under the Law Enforcement (Powers and Responsibilities) Act 2002 and its Amendment Act 2014 as well as powers vested under Part 3A, Division 7 of the Crimes Act 1900 to monitor and arrest individuals participating in criminal activities and organised crime groups.

#### **6. Does the Act present any barriers to entry for prospective new businesses, which need to be considered?**

The Act does indeed present barriers to entry for prospective new businesses. Requirements outlined within this submission including criminal history checks on operators and their close associates, finger and palm printing and restrictions on interstate and international trade all create barriers for new businesses.

#### **7. Should tattoo parlour licenses issued by other jurisdictions be recognised in NSW?**

Yes.

## **5.2 Proposals**

The following proposals offer workable suggestions to assist in adding value to the regime as well as streamlining the licensing system. The ATG proposes:

1. The current legislation be repealed and that intense industry consultation be undertaken by government during the development of any future regulation directed at the industry.
2. Regular meetings between government and industry bodies take place during the development of any future reforms and/or amendments to existing legislation.
3. A reconsideration of the current communications network between the traditional regulator and the police when considering application deadlines and grace periods, should police intelligence and police commissioner approval continue to be required.
4. A national police report from a government-approved agent (such as those available readily online by existing companies) should be acceptable as part of the license application process, thus reducing the administrative burden on the police service and communications problems between the police and the licensing agents. The ATG suggest that the cost of this police check be taken into consideration when government is scheduling fees for licensing.
5. A mail out to all licensed tattooists in NSW that updates them of all changes that have occurred to the licensing regime as a consequence of the review.
6. The scrapping of the unnecessary fingerprinting requirements of the license application.
7. That if the questionable fingerprinting process is deemed to be necessary by state governments, all police clerical staff need to be notified of precise license requirements and any potential burden placed upon their offices.
8. That the current industry standard certification, HLTINFOO5 'Maintain infection prevention for skin penetration', become a mandatory requirement for all NSW tattooists and visiting tattooists from other states. This important certification is currently only required by regulation in three states of Australia yet is the only accreditation available to the industry. The addition of this accreditation to licensing requirements would add value to the regime whilst also presenting another suitable barrier for entry to industry.
9. That a permit scheme should be considered to replace the current licensing requirement for interstate tattooists wishing to enter the state to work. It is perceived that this structure can achieve its policy objectives without damaging the industry through the use of restrictions.
10. That health based competency restrictions be examined with a view to replacing or enhancing current licensing restrictions.

### 5.3 Summary of Recommendations

In the event that the existing licensing structure is to remain the ATG also recommends that:

Operators be entitled to work in other studios within NSW on their existing operator's license.

The *Tattoo Parlours Act* be renamed the *Tattoo Industry Act*.

The police oversight and administrative role within the Act be removed.

A permit scheme be considered to replace the current licensing requirement for tattooists from outside of NSW, both interstate and overseas.

License applicants be required to hold the current industry standard certification HLTINFO05.

The requirement for applicants to provide finger and palm prints be removed.

The requirement for tattooists to include their license number on advertising material be reviewed, with t-shirts, stickers and banners in particular to be removed.

License numbers to remain the same at renewal.

Police powers to enter tattoo studios without warrants be repealed.

The use of secret evidence within the framework of the legislation be removed.

A mandatory offences list be presented to industry for discussion prior to its consideration for use within the Bill.

## 6. CONCLUSION

Tattooing has become a respected artistic and professional practice. Tattoos are applied via an endless variety of styles, traditions and sophisticated techniques. Nurtured in an environment of artistic integrity, economic expansion, freedom of expression and a thriving artisanal subculture, tattooing is experiencing an explosive artistic renaissance and is contributing to both the economic and cultural vitality of Australian society.

The vast majority of professional tattooists strive to uphold the high standards of practice that are expected within this competitive and fast growing art form. Australia is renowned for its excellence in tattooing and is home to many of the global industry's finest artists.

Despite these exciting developments, some official agencies have painted—and have continued to paint—a dark and threatening portrait of the culture of tattoo craft for a long time, and tattooing has yet to fully emerge from the shadows of this reputation. Such a reputation, which is now irrelevant and anachronistic, makes it hard for the public and government alike to accept a new, improved tattoo trade.

In order to further rehabilitate the reputation of the industry, ensure its health and professional functioning and enable tattooing to be embraced by the community as a fine art form, industry professionals want to foster and encourage an environment of growth, responsibility, ethical practice and change among ourselves and other artist-practitioners. It is hoped that state governments will recognise and acknowledge these developments and support us in our endeavors to build a safe and sustainable environment for the future.