



Report for NSW
Government

*RE: Licensing and regulation of the
tattoo industry*



The Australian Tattooists Guild has compiled the following report to assist the NSW Government in further developing suitable licensing regimes for the Tattoo Industry in NSW.

In addition to presenting this report the ATG would like to express interest in developing further dialogue with the government and its various related departments in order to provide consultation that may assist the government in its endeavors to identify suitable regulatory tools for the tattoo industry.

It is a very important time for the Australian tattoo industry as we now see various State and Territory Governments implementing legislation to tackle the huge problems created by the infiltration of organised crime into industries.

We would now ask the NSW Government to review the structure of the regimes that have been implemented in NSW and to take this opportunity to make recommendations that ensure legislation responsibly protects the broader interests and needs of the tattoo industry and its participants.

On behalf of the ATG committee and our members we would like to thank the government of NSW for allowing us an opportunity to present this body of work.

We remain hopeful that through this process positive outcomes for the future can be achieved.

Regards,

Josh Roelink
President

Tashi Dukanovic
Vice President



Both NSW and QLD parliaments have introduced licensing regimes for tattooists and tattoo business operators in order to address the perceived connections between organised crime groups and the tattoo industry.

The Professional tattooing community remains pro regulation and supports government's endeavors to address the infiltration of criminal organisations into industry. It is however broadly perceived that an opportunity for regulation to tackle other ongoing problems that the industry faces has been missed within the framework of current regimes.

Within this report we look to identify suitable regulatory tools that may be of assistance to agencies in combating the perceived infiltration of organised crime groups whilst also addressing the broader needs of industry.

We also evaluate the efficacy of the tools available to regulators as well as the costs and benefits of their use to industry participants and regulating agencies.

The existence and extent of infiltration

Organised crime groups are often described as flexible and adaptive and as such present an ever-evolving challenge for law enforcement and regulatory agencies.

Due to the tattoo industry having evolved in Australia predominantly through an interest from Organised Motorcycle Gang's in the mid 1970's the art form has retained, to some degree, a reputation that is synonymous with criminality.

Traditionally within OMG clubs tattooists were trained and employed with individual tattooists often having no affiliation with the club nor intentionally profiteering from any criminal conduct said clubs might have been involved in.



Interest from OMGs in the art form has now greatly diminished over the last decade as individuals who display a genuine interest in tattooing have joined the industry.

New perceptions also continue to evolve as an increasing interest in tattooing from both the media and the general public grows.

The extent of infiltration within the tattoo industry remains unquantified with access to police intelligence being limited.

Victoria Police has stated that OMGs are involved in the tattoo industry in order to distribute amphetamine-type substances to a wide market.

(Law Reform, Drugs and Crime Prevention Committee, Parliament Vic, above n9 359).

In response to this the ATG would speculate that participation in the aforementioned activities are likely to be conducted by smaller groups of individuals with distribution occurring out of random individual premises. These operations are perceived as not necessarily being linked to OMG's alone but rather opportunistic ventures on the part of a small group of non-genuine operators.

Since the implementation of licensing regimes in NSW and QLD, Victoria, along with other non regulated states has seen the emergence of OMG operators opening in areas not known for their presence in the past.

It is perceived that what infiltration does continue to exist nationally does so for the purpose of the intermingling of legitimate and criminal enterprises to enable the commission of crime or concealment of the proceeds of crime with random use of professional facilitators in order to conduct criminal activities.



Social harms to industry

The social harms of infiltration to the tattoo industry include

- entry to occupation/ industry for illegitimate purposes, organised crime groups having a propensity for general unlawful conduct when operating a legitimate business, including tax and occupational health and safety infringements
- threats to public safety through the use of unlawful tactics to achieve commercial results (for example, the use of intimidation or violence when existing business operators refuse to pay protection moneys to organized crime groups operating in their area)
- damage to the integrity of the industry where infiltration by organized crime groups attracts and shelters disreputable participants and repels reputable participants or entrants.

Members of our organisation in NSW have stated that since the implementation of licensing regimes certain known OMG businesses continue to operate. This suggests that the scrutiny of applicants and their associates is not necessarily effective in preventing entry by organised crime groups.

A larger phenomena being experienced in both NSW and QLD is that where certain operators have ceased to exist, unknown amateurs have gained licensure and now operate openly.

(See – ATG Submission)

This phenomenon has created new problems for professional artists.

Due to the industries culture and past association with OMCG's it has long been recognised that certain areas were off limits to new business operators that had OMCG business established within that geographical zone.



This new social harm created by amateur operators flooding the market now threatens the integrity, culture and sustainability of our small but fast growing industry. It has also created huge public health risks due to entrants not being required to provide agencies with any proof of qualification as to their ability to practice.

The public perception being that if an individual holds a license, they must have proven that they were qualified to obtain it.

(See – ATG Submission)

Due also to the availability of tattoo supplies on the Internet, individuals who are not professionally recognised and therefore not eligible to purchase quality supplies from legitimate industry supply company's can gain access to equipment to practice.

The availability of inferior untested pigments and equipment to the general public via internet commerce continues to be of a huge concern to both professional tattooists and health professionals/ organisations nationally.

Whilst state governments nationally recognise the significant health complications associated with tattooing and endeavor to address this, it is perceived that governments also need to protect the interests of both the industry and the general public through restricting or banning the sale of industry related equipment to the general public.

Identifying suitable regulatory responses

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 ATG disagree with the principle policy objective and suggest that any Bill directed at implementing a licensing regime for the tattoo Industry should have the protection of the integrity and sustainability of industry as its principal policy objective, whilst also addressing the impacts of organised crime on industry.

DFT as regulating agency

As a traditional regulating agency the DFT has the potential to deliver a wide range of regulatory purposes. These are not limited to the prevention of criminal conduct or infiltration of industry for criminal purposes.

The DFT has the ability to balance competing regulatory requirements whilst addressing numerous regulatory objects. With clear definition on policy priorities and a more comprehensive understanding of the nature of the industry and its regulatory requirements effective regulatory measures and their administration are achievable.

(see- ATG Submission)

The use of regulatory tools currently employed to prevent the infiltration of organised crime groups into the tattoo industry have the potential to be enhanced through the further development of suitable pre conditions for entry.

It is perceived that tailored preconditions would provide agencies with an ability to achieve the relevant regulatory goals whilst also protecting and promoting professional standards within industry.

Positive licensing regimes

Entry into the tattoo industry is currently regulated by a positive licensing regime. By scrutinising prospective entrants, a licensing regime has the potential to prevent the corruption or destabilization of the industry by organized crime groups whilst ensuring the



integrity of industry is maintained through the use of tailored pre conditions.

Further, an effective licensing regime may reduce regulatory burdens in the monitoring of industry, as there does exist confidence in the probity of new entrants.

A tailored regime that focused on qualification rather than criminality, supported by the development of pathways for entry would act as a deterrent for criminal organisations and infiltration.

“Regulatory regimes have the ability to prescribe the method by which an applicant’s identity is to be proved, or the method may be within the regulator’s discretion”

(VLRC consultation paper 2015)

It is suggested that focus on entrant’s ability to provide proof of professional practice would ensure that both industries and governments regulatory goals were met – this provides for priorities of industry as described within this report, as well as supporting government work in combating the infiltration of organised crime into industry.

License preconditions

A key aspect of a licensing regime is the use of preconditions to ensure that unqualified or unsuitable people are not granted licenses. NSW’s current regime has attempted to achieve this. However, due to entry requirements not focusing on proof of professional practice - outside of requirements to work in council registered premises - individuals with little to no training have obtained licensure to operate.

The ability of preconditions to clearly identify entrants into industry as legitimate professional operators clearly exists.



In order for the ATG to offer suggestions for suitable pre conditions for entry into industry that not only create barriers for entry to organised crime groups but also ensure entrants hold the requisite skill to participate, the qualities of a tattoo artist need identifying.

An individual that is a fit and proper person for entry into the tattoo industry should retain the following qualities;

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

(developed in conjunction with CLA- see attachment)

The Tattoo Parlour Bill in NSW states that a fit and proper person to work in the tattoo industry is a person who is not a controlled person. Logical inconsistencies exist. Being a controlled person is a status that is clearly divorced from the technical requirements of professional tattooing.

Emphasis must also be placed on the requirement of entrants to obtain the current industry standard cross contamination certification.

Use of Registration schemes – state to state recognition of licenses

Establishing state-to-state recognition of licensing is understood to be a complex process and one that may need further development through the cooperation of regulating agencies within the various states in the future.

A registration scheme requires an individual to list their name and other information in an official register if they wish to participate in a



particular occupation or industry.

The information contained in a register may be open to all people, restricted to certain people, and/or only available for inspection for certain purposes.

Registration schemes have the ability to be used to facilitate the sharing of information between agencies in different jurisdictions.

Registration schemes may be an appropriate, cost-effective regulatory tool for agencies to employ when looking to implement a method by which professional tattoo artists may travel between states for employment and/or to facilitate the important element of the conferencing of information and knowledge that exists within the culture of the industry.

A registration scheme may operate in lieu of a licensing regime. Alternatively, a more complex registration scheme may operate in a very similar way to a licensing regime.

The benefits of a registration scheme may include:

- low-cost barriers to the entry of organised crime groups into lawful occupations and industries—group members may not be prepared to have their details entered on a register
- the creation of a business environment that is less conducive to the entry of organised crime groups, by making information about industry participants easily available to the public
- the ability of licensed industry participants to travel regularly to other regulated states without having to be burdened by license application processes and restrictions

(see attachment – ATG Submission)



Use of Registration schemes for new entrants to industry

Generally, a registration scheme is one of the least intensive ways of regulating entry into an occupation or industry. In the event of appropriate pre conditions for licensure being implemented, with full licensure being only accessible to qualified professional tattooists, industry trainees may potentially be listed on a register until fully qualified for entry.

Thus allowing trainees authorisation to be present on premises whilst ensuring that untrained individuals are not performing the work of qualified tattooists. Full licensure could potentially be dependent on the “signing off” of a traineeship by a licensed tattooist.

Agencies may also look to the development of oral or written exams for entrants.

The additional benefits of a registration scheme for agencies are the creation of low-cost barriers to the entry of organised crime groups into industry as previously mentioned. Further barriers are also created to potential entrants who are not genuine.

Group based exclusions

It is understood that one possible benefit of group-based license exclusions is some reduction in costs and burdens on regulators.

A person will be automatically excluded from one or several occupations or industries without the need for the regulator to examine other, perhaps more resource-intensive, licensing criteria.

A consequence of this perceived benefit is: group-based exclusions may create a considerable barrier to employment for people subject to anti-association laws. It is understood and well known within the tattoo industry that several accomplished, nationally and internationally recognised Australian tattooists have or are currently employed by OMG owned studios.



Rules relating to the effective control of a business

Through our organisations recent work we have examined other regulatory regimes that require the licensee to be in effective control of the relevant business.

Effective control requirements aim to ensure that the licensee is the person who actually conducts, controls and obtains the financial benefit from the business. In the absence of such requirements, organised crime groups may attempt to obtain a license under the cover of an intermediary or proxy, and then exercise effective control over the business once the license has been granted. This type of requirement is perceived to offer benefits to industry.

License duration and renewal requirements

It is understood that the duration of licenses and requirements for the renewal of licenses may affect the degree to which occupation or industry participants are monitored.

However, due to the intensive scrutiny employed for entry under current regimes the need for ongoing monitoring seems to diminish.

Long license periods, which are perceived to create additional monitoring requirements due to fewer opportunities to scrutinize incumbents, should be adopted due to the stringent scrutiny of applicants at entry.

Relatively short license periods may reduce monitoring requirements for agencies but they increase costs for legitimate incumbents as well as other burdens due to the arduous process currently required.

(see- ATG Submission)



Models of compliance monitoring

The effectiveness of the use of inspection based monitoring by NSW police is difficult to ascertain. Whilst inspection based monitoring is required and viewed as necessary for routine council health inspections it is not perceived to be of any benefit to police or other agencies when attempting to detect/ monitor organised crime groups.

The current regulatory regime provides powers for both NSW police and the DFT to conduct investigations to obtain information that is relevant to the activities conducted under a license.

It is perceived that resources would be more effectively used through a complaints based model, which places fewer demands on the regulator than an inspection-based model.

It is thought that a reactive type model, which relies on other occupation participants, consumers or other people making a complaint, would be of more benefit to agencies than inspection based monitoring.

Prohibited practices

Anticipating the behavior of organised crime groups within industry and focusing on preventing or detecting that behavior is thought to be of benefit to both industry and the general public.

The prohibition of certain practices may assist in this respect.

For example:

- using physical force and or undue harassment/coercion
- doing or threatening to do any act that may intimidate a person or a member of that person's family.

If a person uses physical force, undue harassment or coercion within



the operation of a tattoo business, that person may then be prohibited from participation within industry.

Record-keeping obligations

Current requirements for record keeping as outlined within legislation place unnecessary burden on industry participants.

Whilst it is understood that the strict enforcement of these obligations may be an important tool in preventing or hindering the supply of goods to or from organised crime groups, the use of this tool for said purpose is not discerned to have relevance to the tattoo industry.

Professional tattooists predominantly choose to source equipment and supplies from reputable supply companies both in Australia and off shore.

Tattoo operators already have extensive obligations to Health Departments to maintain the upkeep of client consent forms and records/ autoclave running sheets/ equipment maintenance and procedural logs.

These obligations are in addition to ATO financial transaction record keeping requirements for operators and contractors.

If it is a reality that small operations of drug distribution is occurring through random tattoo studios it is thought to be highly unlikely that these individuals will be retaining evidence of these dealing within the business records, and that any business suspect of money laundering is subject to the scrutiny and jurisdiction of Australian Tax Law.



Continuous disclosure obligations

Current legislation employs the use of continuous disclosure obligations that require licensed business operators to report new events to regulators - such as licensed tattooists leaving employment of the business, and new contractors working for the operator.

It is understood that continuous disclosure obligations may assist in circumstances where organised crime groups seek to associate with an existing authorised person in a lawful industry and make use of this person as an intermediary in criminal conduct.

This is perceived to be of little relevance to the large majority of current industry participants. It is also perceived that the use of this tool places burden not only on industry but also on the regulator to ensure that these obligations are complied with.

Detection of unauthorised participants

Monitoring regimes may seek to prevent organised crime groups as well as amateur operators, who currently pose a major problem for both professional tattooists and the general public alike from operating without authorisation in industry.

Regulators - through current legislation have been provided with extensive investigative powers for the purpose of detecting people who are operating without a necessary license, including powers that relate to the inspection of premises and the obtaining of documents and information.

Further regulatory tools that may discourage people from operating without the necessary license include:

- requiring a license holder to produce their license document for inspection by customers
- declaring that a person is not entitled to retain or recover monies obtained or earned through unlicensed activity
- empowering courts to freeze the bank accounts of unauthorised occupation or industry participants



- creating criminal sanctions for individuals operating without license or in premises not registered by council
- making it an offence for a person to be found in unlicensed or proscribed premises without lawful excuse

Information sharing for the purpose of regulation

Access to information is critical for the effective use of many of the regulatory tools described throughout this report. For example, regulators need to access information to determine whether a person is fit and proper to hold a license. Lack of access to information could lead to unsuitable people gaining entry to an occupation or industry.

Equally, difficulties in accessing information could cause unreasonable delays in processing applications - even of fit and proper persons - or result in applications of suitable people being refused, as has been the case in NSW.

It may be necessary to improve information sharing between government agencies in order to prevent the infiltration of lawful occupations and industries by organised crime groups.

Solutions to any information-sharing problems in NSW will have to take into account the specific issues in this jurisdiction, including the fact that:

Information about people is held and used by a range of government agencies. This may lead to a duplication of work where a person is being investigated by, or is making applications to, more than one agency. In the absence of near-perfect information sharing, it is also likely to lead to different information being available to different agencies.

Information may be held by agencies in various Australian jurisdictions. Relevant information about a person or organisation may be confidential (for example, information held by a police force may be operationally sensitive).



Even where information is shared, the time and cost of seeking information from agencies in different jurisdictions may be considerable

Some of these issues may be dealt with through the creation of a single, centralised agency that collates and assesses probity-related information, at either a NSW or Commonwealth level, similar to the BIBOB Bureau.

Another possibility may be the creation of a single, open-source database for regulators that holds information gathered in the course of regulatory activities, subject to necessary restrictions and/ or security clearances.

Protections for people affected by decisions of the regulator

Regulators have considerable powers to restrict entry into the tattoo industry. The exercise of these powers may limit employment and business opportunities of prospective participants.

The rights of these people are currently not protected by administrative law measures such as rights to obtain reasons for the decision and rights of review.

In conjunction with Civil Liberties Australia the ATG submit that administrative decision-making must be open to judicial review.

(see- CLA accompaniment submission)

Anti-money laundering laws

The concealment or laundering of the proceeds of crime appears to be one of the perceived purposes of organised crime group infiltration of tattoo industry. Anti-money laundering laws may therefore help make certain business types and professional facilitators less attractive to organised crime groups.



Future role of the Australian Tattooists Guild

The ATG now look to undertaking the role of becoming the qualitative body for the industry in the future. Work is now being done to develop a framework for presentation to government that would assure government and its agencies that a responsible industry appropriate body was managing the industry. It is perceived that future legislation may recognise the ATG as a mechanism within its policy. The potential for this to occur has been identified by ATG members and more recently the OFT QLD as offering positive outcomes for both the government and the industry as a whole.

Conclusion

Within this report we have looked to identify some of the regulatory tools that are available to agencies that are perceived to offer positive outcomes for both government and industry. Our organisation will continue to look at other jurisdictions and mechanisms in an attempt to gain a clear understanding of what future outcomes can be achieved for our industry.

The ATG continue to conduct research into licensing regimes for the tattoo industry being used in other jurisdictions outside of Australia in order to identify elements within regimes currently in use, which are perceived to offer benefits to both industry and government. It is hoped that the NSW government will continue to develop ongoing dialogue with the ATG in order for this information to be put to practical use in the future.

This report has been developed as an accompaniment to the ATG Submission – Licensing and Regulation of the Tattoo Industry in Australia and reflects the recent work the organisation has undertaken in association with the Victorian Law reform Commission and Civil Liberties Australia. The ATG would like to thank CLA, VLRC and the national community of Professional Tattooists for supporting both the research and the content of this report.