



New South Wales

Tattoo Parlours Amendment Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Tattoo Parlours Act 2012* (the *principal Act*) as follows:

- (a) to enable licences under the principal Act to be renewed rather than requiring an application to be made for a new licence when the licence expires,
- (b) to provide that the privilege against self-incrimination does not excuse a person who is required to furnish records or information to police and other authorised officers, or to answer questions, under the principal Act from furnishing that information or those records or from answering those questions,
- (c) to make a number of other amendments of a minor, administrative or consequential nature.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Tattoo Parlours Act 2012 No 32

Close associates

Schedule 1 [2] requires an application for the renewal of an operator licence to be accompanied by a statement containing details of any close associates of the applicant.

Schedule 1 [7], [19] and [20] provide that the Commissioner of Police is, if the Secretary refers an application for a licence or for the renewal of a licence to the Commissioner, to inquire into and determine, and report to the Secretary on, whether a close associate of the applicant or the licensee is a fit and proper person. **Schedule 1 [1]** amends the definition of *adverse security determination* so that it includes such determinations. **Schedule 1 [18]** is a consequential amendment.

Schedule 1 [21] and [22] provide that the Commissioner of Police may, in making such a determination, consider information relating to spent convictions, criminal charges or offences and may, by notice in writing served on the close associate, request further information or records that is, in the opinion of the Commissioner, relevant to the investigation.

Schedule 1 [38] extends the grounds on which an application for administrative review may be made to include an adverse security determination by the Commissioner of Police about a close associate of the applicant for review.

Licence renewals

Schedule 1 [3] provides for the making of applications for the renewal of operator licences and tattooist licences instead of requiring an application for a new licence to be made when the licence expires. The amendment also provides that an existing licence will remain in force until an application for renewal is determined. **Schedule 1 [17]** substitutes section 17 of the principal Act to remove the current provision that prevents licences from being renewed.

Schedule 1 [11]–[14] and [16] extend existing provisions relating to the granting of licences by the Secretary so that they apply to licence renewals. **Schedule 1 [4], [8] and [12]** extend provisions under section 27 of the principal Act to allow administrative review of licence renewal applications.

Schedule 1 [4] also provides for the Secretary to investigate applications for the renewal of licences and to refer such applications to the Commissioner of Police. **Schedule 1 [9]** provides that such referrals are required only if the application includes changes relating to the close associates of the applicant or the premises where the licensee carries on business. **Schedule 1 [5], [6] and [8]** are consequential amendments.

Schedule 1 [10] enables the Secretary or the Commissioner of Police to require further information in relation to an application for the renewal of a licence.

Schedule 1 [35] provides the refusal or failure of the Secretary to renew a licence granted to a person will be administratively reviewable by NCAT. **Schedule 1 [37]** provides that, for the purposes of applying for such an administrative review, an application for the renewal of a licence is taken to have been refused if the licence is not renewed within 60 days after the application is made.

Disclosure of criminal intelligence information

Schedule 1 [23]–[25] provide that the Commissioner of Police and the Secretary are not required to give reasons for a determination or licence decision that is based on any criminal intelligence report or other criminal information held by the Commissioner. **Schedule 1 [39]** ensures that NCAT does not disclose any such report or information except with the approval of the Commissioner of Police. **Schedule 1 [40] and [41]** are consequential amendments.

Change of particulars relating to licences

Schedule 1 [27] makes it a condition of a tattooist licence that the licensee must give written notice to the Secretary of a change in any of the particulars in respect of the licence, and of the appropriate new particulars, within 14 business days of the change occurring. The same requirement applies currently to operator licences only. **Schedule 1 [30]** requires the notice to be accompanied by copies of 3 forms of personal identification for each individual identified as a close associate in that notice. **Schedule 1 [26], [28] and [29]** are consequential amendments.

Grounds for cancellation of licence

Schedule 1 [31] requires the Secretary to cancel a licence if the licensee or a close associate of the licensee fails to comply with a requirement by the Commissioner of Police under section 19A of the principal Act to provide further information in connection with an investigation of the licensee's suitability to continue to hold a licence.

Schedule 1 [32] provides that the Secretary may cancel a licence if the licensee does not, within 60 days of being notified of the grant of the licence, collect the licence from the place nominated by the Secretary. **Schedule 1 [33]** provides that, if the Secretary cancels a licence for non-collection, the Secretary is not required to suspend the licence first nor seek reasons from the licensee as to why it should not be cancelled and **Schedule 1 [36]** provides that the decision to cancel a licence on the ground of non-collection is not administratively reviewable. **Schedule 1 [34]** removes a superfluous cross-reference.

Miscellaneous amendments

Schedule 1 [15] makes it clear that if development consent or approval under the *Environmental Planning and Assessment Act 1979* is required to use premises for the purposes of carrying on a body art tattooing business the Secretary may refuse to grant or renew the licence if that consent or approval is not in force.

Schedule 1 [42] enables an authorised officer to make inquiries and examinations while on premises that have been lawfully entered by the officer under the principal Act.

Schedule 1 [43] contains provisions that will apply when a person is required under section 19A or 30C of the principal Act to furnish information or records or answer questions in connection with the powers of an authorised officer. Self-incrimination is not an excuse from such a requirement, however any information or records furnished or answer given by a natural person is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 33 of the principal Act) if the person objected at the time that it might incriminate the person or the person was not warned that the person may object to furnishing the information or records, or to answering the question, on the ground that it might incriminate the person.

Schedule 1 [44] updates the provision relating to the issuing of penalty notices under the principal Act.

Schedule 1 [45] updates the manner in which documents under the principal Act may be served.

Schedule 1 [46] provides that a pending application for a new licence to replace an existing licence that is due to expire is to be treated as an application for the renewal of the existing licence under proposed section 13A.



New South Wales

Tattoo Parlours Amendment Bill 2017

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New South Wales

Tattoo Parlours Amendment Bill 2017

No. , 2017

A Bill for

An Act to amend the *Tattoo Parlours Act 2012* to make further provision with respect to the licensing and regulation of body art tattooing businesses and body art tattooists; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Tattoo Parlours Amendment Act 2017*.

3

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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Schedule 1 Amendment of Tattoo Parlours Act 2012 No 32

[1] Section 3 Definitions

Omit the definition of *adverse security determination* from section 3 (1). Insert instead:
adverse security determination made by the Commissioner means:

- (a) in relation to an applicant for a licence—a determination of the Commissioner that is reported to the Secretary under this Act on any one or more of the following:
 - (i) that the applicant is not a fit and proper person to be granted a licence,
 - (ii) that a close associate of the applicant is not a fit and proper person,
 - (iii) that it would be contrary to the public interest for the applicant to be granted a licence, or
- (b) in relation to a licensee—a determination of the Commissioner that is reported to the Secretary under this Act on any one or more of the following:
 - (i) that the licensee is not a fit and proper person to continue to hold the licence or to have the licence renewed,
 - (ii) that a close associate of the licensee is not a fit and proper person,
 - (iii) that it would be contrary to the public interest for the licensee to continue to hold the licence or to have the licence renewed.

[2] Section 12 Statement as to close associates of applicant for operator licence

Insert “or for the renewal of an operator licence” after “operator licence” in section 12 (1).

[3] Section 13A

Insert after section 13:

13A Renewal of licence

- (1) An application for the renewal of a licence may be made to the Secretary by the licensee.
 - (2) The application must:
 - (a) be in the approved form and manner, and
 - (b) be accompanied by the fee prescribed by the regulations, and
 - (c) in addition to the statement required under section 12, be accompanied by copies of 3 forms of personal identification of an approved kind for each individual identified as a close associate in that statement and who was not identified as such in the statement that accompanied the previous licence or renewal application made by the licensee.
- Note.** See sections 14–17 in relation to the grant, conditions and duration of renewed licences.
- (3) If an application for the renewal of a licence is received by the Secretary on or before the date on which the licence is due to expire, the licence is, unless it is suspended for the time being under this or any other Act, taken to continue in force until the application is determined by the Secretary.

(4)	Division 3 applies to an application for renewal of a licence in the same way as it applies to an application for a licence.	1
	Note. The Commissioner is required to make a security determination under Division 3 in relation to an application for the renewal of a licence that is referred to the Commissioner only if the application includes changes relating to the close associates of the licensee or the licensed premises—see section 14 (2).	2
(5)	A licence may be renewed on more than one occasion.	3
(6)	Section 12 of the <i>Criminal Records Act 1991</i> does not apply in relation to an application for the renewal of a licence.	4
		5
		6
[4]	Sections 14 and 27 (3)	7
	Insert “or for the renewal of a licence” after “an application for a licence” wherever occurring.	8
		9
[5]	Section 14 Investigations, inquiries and referrals in relation to licence applications	10
	Omit “either or both” from section 14 (b). Insert instead “any one or more”.	11
[6]	Section 14 (b) (i)	12
	Omit “to be granted the licence”.	13
[7]	Section 14 (b) (ia)	14
	Insert after section 14 (b) (i):	15
	(ia) whether a close associate of the applicant is a fit and proper person,	16
[8]	Sections 14 (b) (ii) and 27 (2)	17
	Insert “or renewed” after “granted” wherever occurring.	18
[9]	Section 14 (2)	19
	Insert at the end of section 14:	20
	(2) However, an application for the renewal of a licence is required to be referred to the Commissioner only if the application includes any changes relating to:	21
	(a) the close associates of the licensee, or	22
	(b) the licensed premises at which the licensee carries on a body art tattooing business.	23
[10]	Section 15 Secretary or Commissioner may require further information	24
	Insert “or for the renewal of a licence” after “an applicant for a licence” in section 15 (1).	25
[11]	Section 16 Decision of Secretary in relation to licence applications	26
	Insert “or for the renewal of a licence” after “application for a licence” wherever occurring in section 16 (1) and (2).	27
[12]	Sections 16 (1), (3) and (4) and 27 (4)	28
	Insert “or renew” after “grant” wherever occurring.	29
[13]	Section 16 (3) (a)	30
	Insert “or for the renewal of the licence” after “application for the licence”.	31

[14] Section 16 (4)	1
Insert “or the licensed premises” after “proposed licensed premises” wherever occurring.	2
[15] Section 16 (4) (b)	3
Omit “has not been granted”. Insert instead “is not in force”.	4
[16] Section 16 (5)	5
Insert “or renewal” after “granting”.	6
[17] Section 17	7
Omit the section. Insert instead:	8
17 Duration of licence	9
(1) A licence (other than a renewed licence) comes into force on the date specified in the licence.	10 11
(2) A renewed licence comes into force on the date following the expiry date of the licence it renews.	12 13
(3) A licence remains in force for a period of 3 years from the date on which it comes into force unless it is sooner cancelled or surrendered or otherwise ceases to be in force.	14 15 16
Note. A licence may also cease to be in force by operation of section 27 of the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	17 18
(4) A licence suspended under this or any other Act is taken not to be in force for the purposes of this Act during the period of the suspension. However, the suspension of a licence does not affect the term of the licence.	19 20 21
[18] Section 19 Commissioner to make security determinations about applicants and licensees	22 23
Omit “either or both” wherever occurring in section 19 (1) and (2).	24
Insert instead “any one or more”.	25
[19] Section 19 (1) (a1)	26
Insert after section 19 (1) (a):	27
(a1) whether a close associate of the applicant is a fit and proper person,	28
[20] Section 19 (2) (a1)	29
Insert after section 19 (2) (a):	30
(a1) whether a close associate of the licensee continues to be a fit and proper person,	31 32
[21] Section 19 (4)	33
Insert after section 19 (3):	34
(4) For the purpose of making a determination on a matter referred to in subsection (1) or (2) and without limiting subsection (3), the Commissioner may consider the following:	35 36 37
(a) information relating to spent convictions, despite anything to the contrary in the <i>Criminal Records Act 1991</i> ,	38 39
(b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged,	40 41

(c)	information relating to offences, despite anything to the contrary in section 579 of the <i>Crimes Act 1900</i> .	1 2
[22]	Section 19A Commissioner may require further information	3
	Omit “as to whether a licensee continues to be a fit and proper person to hold a licence, or whether it would be contrary to the public interest for the licensee to continue to hold a licence, the Commissioner may, by written notice served on the person concerned, require a licensee, or a close associate of a licensee,” from section 19A (1).	4 5 6 7
	Insert instead “in relation to any of the matters referred to in section 19 (2), the Commissioner may, by notice in writing served on the licensee or close associate concerned, require the licensee or close associate”.	8 9 10
[23]	Section 20 Disclosure of criminal intelligence information	11
	Omit “under section 19” from section 20 (1).	12
	Insert instead “or taking other action under this Act (including in making a report to the Secretary under section 19)”.	13 14
[24]	Section 20 (1)	15
	Omit “as referred to in section 19 (3)”.	16
[25]	Section 20 (2)	17
	Omit “as referred to in section 19 (3)”. Insert instead “provided by the Commissioner”.	18
[26]	Part 3, Division 4, heading	19
	Omit “ Special conditions relating to operator licences ”.	20
	Insert instead “ Miscellaneous licence conditions ”.	21
[27]	Section 22 Change of licence particulars	22
	Omit “an operator licence” from section 22 (1). Insert instead “a licence”.	23
[28]	Section 22 (1)	24
	Omit “in respect of a licence”. Insert instead “in respect of the licence”.	25
[29]	Section 22 (1)	26
	Insert “, in the case of an operator licence,” after “licensee and”.	27
[30]	Section 22 (1A)	28
	Insert after section 22 (1):	29
	(1A) The notice of a change in the particulars relating to the close associates of the holder of an operator licence must be accompanied by copies of 3 forms of personal identification of an approved kind for each individual identified as a close associate in that notice.	30 31 32 33
[31]	Section 26 Cancellation of licence	34
	Omit section 26 (1) (a). Insert instead:	35
	(a) the licensee or a close associate of the licensee has failed to comply with a requirement of a notice under section 19A and the Secretary has been notified by the Commissioner of that failure, or	36 37 38

[32] Section 26 (2) (a1)	1
Insert after section 26 (2) (a):	2
(a1) if, within 60 days of being notified of the grant or renewal of the licence, the licensee fails to collect the licence from the place nominated by the Secretary, or	3 4 5
[33] Section 26 (3)	6
Insert “or on the ground referred to in subsection (2) (a1)” after “about the licensee”.	7
[34] Section 27 Right to seek administrative review from Civil and Administrative Tribunal	8
Omit “(other than by operation of section 26 (1) (a))” from section 27 (1) (a).	9
[35] Section 27 (1) (a1)	10
Insert after section 27 (1) (a):	11
(a1) the refusal or failure by the Secretary to renew a licence granted to the person,	12 13
[36] Section 27 (1) (c)	14
Insert “(other than on the ground referred to in section 26 (2) (a1))” after “cancellation”.	15
[37] Section 27 (2)	16
Insert “or renewal” after “the grant”.	17
[38] Section 27 (3) and (4)	18
Insert “or a close associate of the applicant” after “about the applicant for the administrative review” wherever occurring.	19 20
[39] Section 27 (4) (a)	21
Omit the paragraph. Insert instead:	22
(a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information without the approval of the Commissioner, and	23 24 25 26
[40] Section 27 (4) (note)	27
Omit “referred to in section 19 (3)”.	28
[41] Section 27 (4A)	29
Omit “identified in the Commissioner’s determination as being from a criminal intelligence report or other criminal information referred to in section 19 (3)”.	30 31
Insert instead “contained in a criminal intelligence report or other criminal information”.	32
[42] Section 30C Powers that may be exercised by authorised officers on entry	33
Insert after section 30C (1) (c):	34
(c1) make such examinations and inquiries as the authorised officer considers necessary,	35 36

[43] Section 33A	1
Insert after section 33:	2
33A Provisions relating to requirements to furnish records or information or answer questions	3 4
(1) Warning to be given on each occasion	5
A person is not guilty of an offence of failing to comply with a requirement under section 19A or 30C to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.	6 7 8 9
(2) Self-incrimination not an excuse	10
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.	11 12 13 14
(3) Information or answer not admissible if objection made	15
However, any information furnished or answer given by a natural person in compliance with a requirement under section 19A or 30C is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 33) if:	16 17 18 19
(a) the person objected at the time to doing so on the ground that it might incriminate the person, or	20 21
(b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.	22 23 24
(4) Records admissible	25
Any record furnished by a person in compliance with a requirement under section 19A or 30C is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.	26 27 28 29
(5) Further information	30
Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under section 19A or 30C is not inadmissible on the ground:	31 32 33
(a) that the record or information had to be furnished or the answer had to be given, or	34 35
(b) that the record or information furnished or answer given might incriminate the person.	36 37
[44] Section 35	38
Omit the section. Insert instead:	39
35 Penalty notices	40
(1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.	41 42
(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.	43 44

(3)	The <i>Fines Act 1996</i> applies to a penalty notice issued under this section.	1
	Note. The <i>Fines Act 1996</i> provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.	2 3 4 5
(4)	The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations.	6 7
(5)	This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.	8 9 10
[45]	Section 39	11
	Omit the section. Insert instead:	12
	39 Service of documents	13
(1)	A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:	14 15
(a)	in the case of an individual—by personal delivery to the person,	16
(b)	by post to the address specified by the person for the service of documents of that kind,	17 18
(c)	in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,	19 20 21
(d)	in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,	22 23 24
(e)	by email to an email address specified by the person for the service of documents of that kind,	25 26
(f)	by any other method authorised by the regulations for the service of documents of that kind.	27 28
(2)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.	29 30 31
(3)	In this section, <i>serve</i> includes give or send.	32
[46]	Schedule 1 Savings, transitional and other provisions	33
	Insert after Part 3:	34
	Part 4 Provisions consequent on enactment of Tattoo Parlours Amendment Act 2017	35 36
	6 Pending applications for licence renewals	37
(1)	This clause applies in relation to an application (a <i>pending application</i>) that was made, but not finally determined, before the commencement of the <i>Tattoo Parlours Amendment Act 2017</i> by the holder of a licence (the <i>existing licence</i>) for a new licence to replace the existing licence that is due to expire.	38 39 40 41

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| (2) | A pending application is taken to be an application made under section 13A for the renewal of the existing licence. | 1 |
| | | 2 |
| (3) | Section 14, as amended by the <i>Tattoo Parlours Amendment Act 2017</i> , extends to a pending application. | 3 |
| | | 4 |