Submission: CLA

Civil Liberties Australia submission in support of the Australian Tattooists Guild submission for the Regulation of Tattoo Businesses

Civil Liberties Australia (CLA) supports the submission of the Australian Tattooists Guild (ATG) in proposals for the regulation of Tattoo businesses. We recognise that by proactively engaging with the Government, tattoo businesses and the community, the industry can be better regulated, without infringing on civil liberties. The experience in NSW and Qld in the passing of the *Tattoo Parlours Act 2012 (NSW)* and the *Tattoo Parlours Act 2013 (Qld)* has unacceptably infringed on civil liberties. This submission will propose an option for regulation.

Policy Objectives

In considering why the tattoo industry needs to be better regulated, one must first consider what are the qualities of a tattoo artist? CLA and the ATG agree that a fit and proper tattoo artist ought to be a person who:

- is over the age of 18
- possesses the requisite artistic skill;
- produces individualised artwork;
- possesses the requisite technical knowledge;
- possesses the requisite experience;
- is duly qualified; and
- possesses the requisite Occupational Health and Safety certifications.

In contrast, the above mentioned *Tattoo Parlours Bills* in QLD and NSW state that a fit and proper person to work in a tattoo business is a person who is not a controlled person. A logical inconsistency exists. We submit that 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 skilled and experienced at tattooing, possesses the requisite qualifications and knowledge, and is certified to operate the business in conformance with Occupational Health and Safety. Being a controlled person is a status divorced from the art of tattooing.

In the Second Reading Speech in the NSW Parliament, the Minister for Police and Emergency Services, the Honourable Michael Gallacher stated that:

> "*The Tattoo Parlours Bill 2012 aims to break the stranglehold that outlaw motorcycle gangs have over the tattoo industry in New South Wales*."[1]

[1] Hansard (2012) Legislative Council, NSW Parliament, 23 May 2012.

CLA and the ATG disagree with the Minster's priorities for industry regulation. The purpose of this legislation ought to be the protection of the community through the creation of a regulatory regime that ensures tattoo artists are skilled, experienced and qualified to tattoo clients in a safe and healthy manner.

Police Checks

CLA agrees with the ATG and the Governments of NSW and QLD that the Tattoo industry needs licensing and regulation. We submit that Tattoo business operators and their employees should undergo Police background checks for the purpose of ascertaining their identity and criminal history. CLA recognises and agrees with the ATG that. due to the nature of tattooing, individuals who have been convicted of sexual or violent crimes present a public safety risk. It is not acceptable to expose the public to this risk. Furthermore, CLA and the ATG agree that individuals connected to organised crime need to be identified. The ATG Code of Conduct stipulates that

> "*Members must uphold the law in the conduct of their professional activities and members must be removed from any affiliation with any criminal organisation*".[2]

CLA submits that this industry developed and accepted standard should be adopted nationally. The purpose of this industry based standard is to protect the public from unacceptable risk.

Criminal Intelligence Gathering Regime

CLA and the ATG are concerned, in the highest order, that the *Tattoo Parlours Bills* in NSW and QLD are a mechanism for the gathering of criminal intelligence. This purpose is incongruent with civil liberties. The establishment of a regime which compels all persons (except a financial institution that only has a financial interest in the business) who own, operate, or are employed by a tattoo business, and their close associates, to provide finger and palm prints for "*any purpose that the Commissioner sees fit"*[3] is unacceptable

The collection of private information should be consistent with the Australian Privacy Principles. Australian Privacy Principle 6 provides that:

> "*...personal information about an individual that was collected for a particular purpose (the primary purpose), the entity must not use or disclose the information for another purpose (the secondary purpose)...*"[4]

CLA submits that the collection of private information under the existing provisions is not reasonable and proportionate. The necessary checks and balances protecting private information have not been written into the legislation.

The collection of finger and palm prints is incongruent with the determination of whether a person is a fit and proper person to be licenced to own or operate a tattoo business. The collection of finger and palm prints does not reliably indicate whether a person:

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[2] Australian Tattooist Guild (2014) Code of Conduct
[3] s. 13(3) Tattoo Parlours Bill 2012 (NSW)
[4] Officer of the Australian Information Commissioner (2014) Privacy Factsheet 17:Australian Privacy Principles

- is over the age of 18
- possesses the requisite artistic skill;
- produces individualised artwork;
- possesses the requisite technical knowledge;
- possesses the requisite experience;
- is duly qualified; and
- possesses the requisite Occupational Health and Safety certifications.

We submit that the collection of finger and palm prints has been inserted into the *Tattoo Parlours Bills* in both NSW and QLD for collecting criminal intelligence. The expansion of the magnitude of the collection of private information to '*close associates*' enlarges the scope of collection beyond what is reasonable necessary and proportionate. It is incongruent with the values of Australian society. We submit that the collection of private information should be quarantined for the purposes of ascertaining the identity and criminal history of an applicant. If an application is refused, withdrawn or the licence ceases to be effective, the private information must be destroyed. It is unacceptable that private information is indefinitely retained.

CLA submits that administrative decision making must be open to judicial review. The *Tattoo Parlours Bills* in both NSW and QLD fail to provide an appropriate mechanism for reviewing administrative decisions. Should tattoo businesses be regulated, CLA agrees with the ATG that the ordinary principles of judicial review must apply. Information that does not meet the ordinary evidentiary standards must not be admitted into evidence. It is not acceptable that parties are not availed of the information alleged. It is an affront to natural justice that information is not put to, and tested by an applicant in court. An applicant must be given full access to information taken into account by the decision maker. The current provision in the QLD legalisation which provides that: "*the Judicial Review Act 1991, part 4 does not apply to a decision of the chief executive mentioned in section 56(1)*"[5] is not acceptable.

Nor is it acceptable that this legislation further erodes civil liberties where:

> "*Subject to section 56, unless the Supreme Court decides that a decision of the chief executive mentioned in section 56(1) is affected by jurisdictional error, the decision—*
> *(a) is final and conclusive; and*
> *(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the Judicial Review Act 1991 or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity); and*
> *(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.*"[6]

In a further abrogation of the institutional strength of the judicial system, the abovementioned legislation provides that:

> "*In any proceedings relating to a review of a decision of the chief executive mentioned in section 56(1), QCAT or the*
> *Supreme Court—*
> *(a) must, on the application of the commissioner, take steps to maintain the confidentiality of a criminal intelligence report or other criminal information*"[7]

[5] s. 58(1) Tattoo Parlours Bill 2013 (Qld)
[6] s. 58(2) Tattoo Parlours Bill 2013 (Qld)

CLA submits that this is unacceptable. If information does not meet the evidential threshold, it must not be considered by the court. Lowering the evidential burden to include information, that is not put to the applicant, and cannot be effectively tested in open court, is incongruent with the culture and institutions of Australian society, and the rule of law. CLA agrees with the ATG that, should the Government introduce a regulatory regime, all information put to the decision maker must accord to existing standards.

CLA and the ATG are concerned that enabling an animal to enter a sterile environment poses a public health risk. The above-mentioned *Tattoo Parlours Bills* in both NSW and QLD provide that detector dogs may enter a tattoo business. We call on the Government to consult with stakeholders to negotiate a better approach that balances the needs of tattoo businesses and enforcement agencies.

Further Consultation

CLA and the ATG encourage the Parliament to engage with the industry and consult more widely with the community and stakeholders. The QLD Government engaged in no community consultation prior to the introduction of legislation. This is unacceptable. For the Parliament of QLD to behave so is undemocratic. In NSW a wider level of stakeholder consultation and parliamentary debate occurred. It would be preferable for Governments around Australia to learn lessons from the experiences of QLD and NSW, and engage in genuine consultation with stakeholders at the coal face.

It is also preferable that the laws throughout Australia for the one industry are harmonised, and are based nationally on the rule of law rather than arbitrary, non-evidence-based decision making, accompanied by no practical review or appeal rights.

CLA is available and willing to further discuss this issue. Please contact:

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[7] S. 57(2) Tattoo Parlours Bill 2013 (Qld)