SUBMISSION ON EFFECT OF RED TAPE ON OCCUPATIONAL LICENSING

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

MAY 2018

The Australian Tattooists Guild Submission addressing the Red Tape Inquiry

SENATE INQUIRY

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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 Parlors Act 2012* in NSW. Since this time the ATG has grown to include a membership of professional tattooists, business members and supporters from across Australia. The ATG requires its members to adhere to a code of conduct and a set of industry standards that maintain high levels of professional practice in the Australian tattoo industry.

The ATG are grateful to the Senate Chair, Senator David Leyonhjelm, and the Senate Committee of Inquiry for this opportunity to provide a submission that will inform this important investigation into the effect of restrictions and prohibitions on the tattoo industry and community.

In previous submissions to government the ATG have objected to the principal policy objectives of the *Tattoo Parlours Act 2012 NSW*, the *Tattoo Parlours Amendment Act 2017 NSW* and the *Tattoo Industry Act 2013 QLD*, and have asserted that any legislative amendment directed at the industry should make the health standards, sustainability and wellbeing of industry its principal objectives. It is the Association's belief that industry consultation should occur prior to and during the drafting and development of any new regulation that effects the operation of the industry.

In this submission we offer information to government in aid of a clear assessment and understanding of the concerns of the industry within the current regulatory and bureaucratic regime. We outline a set of recommendations that have been developed in consultation with our members for government consideration.

The summary recommendations offered below 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 any review of legislation.

Our advice can be summarised in the following submissions and recommendations:

1. The ATG submits that the policy directives of the *Tattoo Parlours Act NSW 2012*, the *Tattoo Parlours Amendment Act NSW 2017 and the Tattoo Industry Act QLD 2013* 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.

Recommendation: The ATG recommends that future amendments to existing policy should be evidence based, and that industry consultation should occur at every point during the drafting of any new or amendment legislation.

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2. The ATG submit that the regulatory burden of the aforementioned Acts are disproportionate to the risks posed to the community, and do not reflect the current culture and practice of the tattoo industry nation wide.

Recommendation: The ATG recommend that the policy represented by the Acts and any available GIPA be closely scrutinised, and that recommendations be made that ensure any legal or administrative burdens placed on industry are evidence based.

3. The ATG are against the restraints to trade incurred by the NSW and QLD Acts.

Recommendation: The ATG recommend that the administrative policy of the aforementioned Acts be urgently reviewed and amended to align with the current business practices and needs of the profession.

4. The ATG submit that any regulation directed toward the industry should be based in health and safety competencies.

Recommendation: The ATG recommend that all industry participants hold the current industry standard certification, HLTINFOO5 'Maintain infection prevention for skin penetration', and that this important certification be a requirement for entry to industry under state guidelines.

5. The ATG submit that the current use of a fit and proper persons test in the tattoo industry occupational licensing regime is an inaccurate measure of probity for license applicants.

Recommendation: The ATG recommend that licensing probity should be assessed on the basis of a set list of mandatory disqualifying offences that accurately reflect the characteristics of the profession, and that any potential list of disqualifiers be developed in close consultation with industry.

6. The ATG submit that administrators of the NSW Act are burdened by the cross-agency administration of the Act and that this structure creates unnecessary waiting time in the processing of license applications.

Recommendation: Following the recent amendment to the QLD Act, the ATG recommend that the role of the Commissioner of Police be removed from the licensing assessment process and that the Commissioner for the Department of Fair Trade be empowered to conduct probity checks when appropriate.

7. The ATG submit that the requirement for license applicants to provide finger and palm prints is excessive.

Recommendation: It is the perspective of the ATG that the collection of finger and palm prints is incongruent with the determination of whether an individual is a fit and proper person to be licensed to own or operate a tattoo business, or to work in the tattoo industry.

8. The ATG submit that the requirement for license applicants and their associates under the NSW Act to undertake a criminal history check is unnecessary and disproportionate. We are concerned that legislation in NSW and QLD are a mechanism for gathering criminal intelligence and that this is incongruent with civil liberties.

Recommendation: The collection of the private information of license applicants should be consistent with Australian privacy principals.

9. The ATG submit that industry participants in licensed states are burdened by excessive record-keeping obligations, which hold no clear purpose or value to industry or regulators.

Recommendation: The ATG recommend that the requirement for tattooists and operators to complete procedures logs (as is the case in NSW) and Form 9s (as is the case in QLD) be removed.

10. The ATG submit that the requirement in licensed states to keep procedure logs is a duplication of the requirements of state health guidelines and the Public Health Act.

Recommendation: The ATG recommend that the requirement for tattooists to complete procedures logs be removed.

11. The ATG submit that the current requirements of the procedures log, which compel a tattooist to write his/her name and license number eighteen times on the one sheet, is an excessive administrative demand that creates an onerous burden on industry participants.

Recommendation: In the case that procedures logs are maintained as a mandatory administrative procedure, the ATG submit that tattooists should only have to write their name and license number once on their log.

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12. The ATG submit that the requirement in licensed states under Divison3/Sec25 of the QLD Act and Division4/Sec24 of the NSW Act to display license numbers on all advertising material, including t-shirts and stickers, is excessive and places an unnecessary financial burden on industry.

Recommendation: The ATG recommend that the requirement to display license numbers be redefined to exclude items other than business premises advertising material.

13. The ATG submit that the practice of the Department of Fair Trade, NSW of issuing a new license number upon the renewal of licenses creates an unfair burden on industry participants.

Recommendation: The ATG recommend that, once issued, license numbers remain the same.

14. Under Divison3/Sec28 of the QLD Act it is a condition of operator licenses that the licensee must display their personal address on their license at the licensed premises. The ATG submit that this requirement is a breach of the Information Privacy Act 2009 QLD.

Recommendation: The ATG recommend that the Office of Fair Trading QLD place the licensees' business address on their operator's license rather than their residential address.

15. The ATG submit that restrictions in licensed states to the licensing of out-of-state tattooists and to tattooists visiting from overseas are unnecessarily inhibitory and cause damage to individual practitioners, small business and the profession at large. The current requirement that out-of-state tattooists obtain a new, full state-based tattoo license in order to work in a new state, even for a short period of time, is administratively onerous, and does not support the conditions or culture of practitioners in the profession.

Recommendation: The ATG recommend that restrictions upon the licensing of out-of-state practitioners be reviewed and that future structures be developed in consultation with industry. We favour the consideration of a permit scheme to accompany the current licensing requirement for interstate tattooists wishing to enter a new state to work.

16. The ATG submit that the requirement in NSW for overseas visiting tattooists to attend a privately run convention in order to work in the state for a period of 31 days holds no value to industry participants and has created a deterrent to tattooists visiting from overseas to work in the state.

Recommendation: The ATG recommend that the requirement to attend a privately run convention be removed from the existing structure.

17. The ATG submit that the current system of mutual recognition between NSW and QLD does not reflect the policy principles of the *Mutual Recognition Act 1992*. License holders from both states are currently required to re-apply and pay full application fees for a full new license in the state they wish to enter. The sole concession granted to a license holder under the current model of mutual recognition is that they can commence work prior to the license being granted. The current system imposes significant, unfair costs and administrative burdens, and acts as a deterrent to practitioner mobility and the flourishing of industry networks, collaboration and professional development across states.

Recommendation: The ATG recommend that a fee reduction be incurred by existing license holders when applying to work in a licensed state under mutual recognition arrangements.

18. The ATG submit that the requirement for licensed operators to hold a separate tattooists license in order to work at another business within the state places an unnecessary financial burden on operators and does not reflect the current practices of the industry.

Recommendation: The ATG recommend that licensed operators be permitted to work across the state that they are licensed in without having to apply for separate tattooists licenses.

19. The ATG submit that tattoo businesses in licensed states are unnecessarily burdened by fees imposed under different sets of local- and state-level regulations.

Recommendation: The ATG recommend that federal and state regulations and fees be harmonised in order that tattoo businesses seeking to operate legally, professionally and under license are not unfairly financially burdened.

20. The ATG submit that the current probity-based positive licensing regimes in NSW and QLD have created a risk to public heath and safety through a lack of appropriate pathways which evidence professional practice.

Recommendation: The ATG recommend that urgent consultation with industry occur and that measures be developed in conjunction with industry to address the issue of individuals with no previous training gaining licensure.

21. The ATG submit that a lack of consumer safety and awareness exists around online platforms selling tattoo ink and related equipment.

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Recommendation: The ATG support the development of dialogue with regulatory bodies and Standards Australia to explore the potential for regulation and standards that ensure consumer safety.

22. The ATG submit that enforcement provisions, which allow police to enter studios with sniffer dogs for the purpose of drug, firearm or explosives detection without notification or warrant is excessive.

Recommendation: The ATG recommend that police powers of entry be reviewed in the NSW/QLD primary acts.

23. The ATG submit that legislation in other jurisdictions such as South Australia and Tasmania manages the perceived issue of criminality in the tattoo industry in a more appropriate manner with less administrative impact on and cost to the industry.

Recommendation: The ATG submit that structures from other jurisdictions such as South Australia and Tasmania be considered by existing licensing states and other state governments as existing models of practice for new or amended regulation of the tattoo industry. We regard the registration scheme administered under the *Tattoo Industry Control Act 2015 SA* to be legislation that meets the policy objectives of the primary Acts in NSW and QLD, without placing an unnecessary burden on industry. We consider the health-based competency licensing regime as administered by the Hobart City Council, functioning in accordance with the provisions of the *Public Heath Act 1997*, to be a good model for legislators considering appropriate regulation for the industry in other states.

The ATG has serious concerns about breaches of fundamental legislative principals within the Tattoo Parlours Amendment Act 2017 NSW, as well as a lack of judicial review. We are concerned over the deployment of criminal intelligence, its potential to infringe on natural justice, and its potential to breach the rights enshrined within Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICCPR) to which Australia is a signatory.

The ATG has further concerns regarding the powers the NSW Act grants to police that enables them 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 ICCPR.

The ATG considers the NSW 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 information being used against them. This too appears to breach Article 14 of the ICCPR.

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.

The ATG submit that the occupational licensing regimes in NSW and QLD have damaged both the integrity and sustainability of the tattoo industry through a lack of appropriate regulation and a disproportionate burden of regulatory red tape and restrictions.

2. BACKGROUND AND CONTEXTS

2.1 Overview

The tattoo industry globally is in a period of growth. Appropriate regulation has the potential to support the industry and enhance 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.

NSW and QLD

The focus on the monitoring of crime in the implementation of occupational licensing in NSW and QLD has significantly affected the working practices and culture of the tattoo industry. Since the introduction of the Acts 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 and the Office of Fair Trade QLD, who administer the Acts indicate that only a small percentage of applicants for licensure were denied since the inception of the regulatory regime's (see figure 1). These statistics support the tattoo industry's ongoing request that government review the structure of the current regimes 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	**Operator**	465	49	31	10	Not held by DFSI
3	**Tattooist**	1550	64	25	5	Not held by DFSI

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 linked with criminal practices. However, interest from OMCs in the practice of tattooing has diminished significantly over the last decade as individuals who display a genuine interest in tattooing as an art form and professional practice have joined the industry.

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

Despite shifts in the industry the assumption of government has remained 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.

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.[1] 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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1 "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, accessed June 10 2017.

3. NSW LEGISLATION

3.1 The Tattoo Parlours Act NSW 2012

On 3 May 2012 Mr. Anthony Roberts, Minister for Fair Trading, stated in his introduction of the Tattoo Parlous 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 licenses 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 licenses 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.[2]

This statement is problematic largely because Mr. Grant's anecdotal experience does not constitute evidence-based research. If Mr. Grants 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 evidence that demonstrates "tattoo parlours are commonly places heavily associated with organised crime and in particular outlaw motor cycle 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.

The Amendments to the Act also imply that the NSW Police Force have had 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

2 "Troy's Column: The Tattoo Parlours Bill 2012", Troy Grant's Website, 29 May 2012, <www.troygrant.com.au/troys-column/the-tattoo-parlours-bill-2012>.

> 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." [3]

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"[4]

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' test has been omitted is significant – it means that the test is subjective. What did that authorised officer consider necessary?

The Bill removes a person's privilege against self-incrimination.

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.[5]

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3 "Mutual Recognition of licensed occupations", Licence Website, <www.licencerecognition.gov.au/Mutual%20recognition/Pages/default.aspx>.

4 *Tattoo Parlours Amendment Bill 2017* (NSW).

5 *Tattoo Parlours Amendment Bill 2017* (NSW).

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 breech Article 17 of the International Covenant on Civil and Political Rights, which protects against arbitrary interference with privacy or correspondence.[6]

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.[7]

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:

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6 International Covenant on Civil and Political Rights. Article 17(1) (f) The Law Society NSW open letter 29th May 2017.

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

> 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.[8]

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.

3.3 The Tattoo Parlours Act 2013 QLD

In 2013 the QLD Government passed the *Tattoo Parlours Act*. The Act establishes a regulatory scheme, which requires the operators of tattoo parlours and tattoo artists to be licensed. This legislation is the equivalent of the NSW Tattoo Parlours Act 2012. Prior to the introduction of the Tattoo Parlours Act, the body art tattoo industry was regulated, primarily for public health and safety purposes by local governments.

Upon the introduction of the Tattoo Parlours Act, the Attorney General and Minister for Justice said:

> The principal objective of the bill is to introduce a new occupational licensing and regulatory framework which eliminates and prevents infiltration of the Queensland tattoo industry by criminal organisations, including criminal motorcycle gangs and their associates. The act that will be created as a result of the Tattoo Parlours Bill is very similar to legislation that was recently passed in New South Wales after a number of drive-by shootings, fire bombings and violence that had occurred at tattoo parlours linked to criminal motorcycle gangs.

8 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.

The ATG held the same concerns over the policy objective of this Act as is stated above in regard to the NSW Act.

The Taskforce on Organised Crime Legislation (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 draw on the findings of the Organised Crime Commission of Inquiry; and the findings of the *Review of the Criminal Organisation Act 2009.*

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.

As a direct result of the Taskforce Report a number of amendments were made to the primary Act, which included the removal of the role of the Commissioner of Police.

3.4 Policy Implcations of the Acts NSW/QLD

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 of the *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'[9]

9 "Ombudsman recommends repeal of the Crimes (Criminal Organisations Control)

Report of the 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*.

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

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 pp. 319-20; 356. Accessed June 10 2017.

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:

• The regulatory response should be specific to the occupation or industry at risk of infiltration.

• A collaborative approach should be taken in responding to organised crime infiltration.

• Government agencies should seek to maximise information sharing.

• A regulatory regime should promote good administrative decision-making.

• Government agencies should pursue nationally consistent best practice in regulatory responses.

• A uniform concept of organised crime is necessary for effective regulatory responses.[10]

The ATG agrees with these principals.

The VLRC report also states that:

10 VLRC Regulatory regimes Report, p. 8.

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.

As this report proposes, policymakers 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 policymakers 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 endeavor 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.[11] 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.

3.5 Use of Criminal Intelligence

Criminal intelligence is a term used to describe a legal stratagem, created by legislative bodies, allowing secret evidence to be used in legal proceedings whilst excluding or substantially impairing the operation of traditional common law rules of procedural fairness.

The definition most commonly used by Australian legislatures is reiterated on section 59 of the Criminal Organisations Act 2009 (QLD) (COA), which defines criminal intelligence as information that might:

- Prejudice a criminal investigation; or

- Enable the discovery of the existence or identify of a confidential source of information relevant to law enforcement; or

- Endanger a person's life or physical safety.

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

If information accords with one arm of this definition it may qualify as criminal intelligence and be permitted for use in stipulated proceedings, even if the outcome has serious consequences for the person against whom it is presented – for example, an application to withhold rights or privileges from them, or make a particular order against their interests, without the information ever needing to be disclosed to them.

For those raised in our kind of legal system the notion that a person mite suffer an adverse outcome in legal proceedings from 'evidence' they do not, and can not see is an alarming one.

The *Tattoo Parlours Act 2012 NSW* encompasses the use but its legislative components either do not define 'criminal intelligence' at all, or define it merely as information gathered by the Commissioner of Police. The result of this lack of definition means that information no longer needs to posses any special qualities to justify the withdrawal of the person's common law rights to know the nature of the allegations made against them and therefore challenge those allegations.

The ATG submit that criminal intelligence is not evidence and therefore should not be used in the determination of whether a person is fit and proper to hold a license to tattoo.

The COA review described the essential differences between criminal intelligence and evidence:

> Intelligence, and the information and material of which it is comprised, is not (usually) evidence as the word is traditionally used in the judicial sphere. It can at the highest be said to lead to evidence or to facilitate the collection of it.
>
> Intelligence is, by definition, 'patchy' – fragmentary or highly circumstantial – information bearing on possibly remote risks. Suspicion is its animating criterion. It is predictive in nature, for its primary aim is the prevention of hypothesised harm.
>
> Evidence on the other hand is explanatory. It seeks to identify truth (guilt) for the purposes of apprehension, adjudication and retribution. It is wholly reactive – by definition, it only exists after a crime has been committed.
>
> ...Ultimately, evidence and intelligence might be seen as diametrically opposed in that the former operates in a culture in which the desideratum is to avoid a 'false positive' (wrongful conviction) as manifested in Blackstone's famous maxim that 'the law holds that it is better that ten guilty persons escape, than that one innocent suffer'.
>
> In contrast, the predictive or preventative focus of intelligence makes it more tolerant of false positives. The false negative, rather – the risk that goes unanticipated, the 'dots' that go unconnected – is more to be avoided.

The ATG submit that, based on the definition summarised in the COA, criminal intelligence is not evidence and therefore should not be used in the determination of whether a person is fit and proper to hold a license to tattoo.

In its unanimous recommendations to the QLD government the Taskforce stated:

RECOMMENDATION 58 (Chapter Twenty-One)
The requirement under each legislative scheme in the 2013 suite (with the exception of that relating to weapons) that Chief Executives refer every application for a license etc. to the Commissioner of Police should be repealed and replaced with a mechanism which allows the Commissioner of Police to supply relevant information to the Chief Executives on a case-by-case basis (noting, however, the recommendations in Chapter 10).

This recommendation was adopted by the QLD Government in 2017.

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).[12] 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 Probity/Fit and Proper Person Test

In both NSW and Queensland 'fit and proper person" tests feature predominantly in industries heavily regulated by occupational licensing schemes.

A review by the QLD Taskforce on organised crime legislation examined the industries and occupations affected by the use of fit and proper tests. This examination showed that whilst there are some similar aspects to occupational licensing frameworks, each framework remains unique in order to meet legislative objectives and maintain the

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

integrity of the particular industry – in other words, while an individual or organisation may not be considered a 'fit and proper person' for one particular industry, that same individual may be a 'fit and proper person' for another.

The Taskforce concluded that a person's past or current involvement in criminal activity may be a factor relevant to whether a person is a 'fit and proper persons' – but, the type of criminal history, which makes a person unsuitable, may differ from industry to industry.

Whilst these considerations were made by the Taskforce the fact remains that the use of a fit and proper test in ascertaining the probity of applicants for licensure under both the QLD and NSW schemes has not ensured that the policy objectives of the Bills has been met nor has the integrity of the profession been maintained.

The current use of fit and proper tests has seen numbers of persons denied licensure for offences which hold no perceived relevance to either the policy of the principal Acts nor to the profession itself.

Numbers of individuals have been denied for a perceived pattern of criminality, some with charges, which have occurred over 10years ago, or being listed from their juvenile record. Cases of individuals being denied for property offences such as graffiti, an art form which has a close relationship with tattooing, as well as individuals who have fewer than 3 criminal offences in a 10 year period, none of which have incurred a custodial sentence or substantial fine. An examination of the case files taken to NCAT also reveals that driving fines and offences have been used within the determination of whether a person is fit and proper.

Individuals in NSW have also been denied licensure for tattooing without a license and yet the DFT have provided no information to the industry regarding changes to policy which created a cut off date whereby individuals could no longer tattoo whilst their application was pending as was originally the case.

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.

4.3 Restrictions on movement

The *Tattoo Parlours Act 2012 NSW* and the Tattoo Industry Act 2013 QLD restricts tattooists from outside of the state from entering the state freely, thus limiting trade within the profession. This also limits the conferencing and sharing of professional knowledge, which in a profession with no formal accreditation is significantly important. These restrictions, which are extended to tattooists visiting NSW/QLD from other countries, have had a profound effect on the professional community as many business owners have struggled to attract artists from other states or overseas to work in their studios.
NSW and QLD are home to many of the industries leaders: prior to the introduction of the Act's, it was perceived as a privilege by many within the profession to be invited to work in their studios. Now however many Industry Leaders and their businesses struggle to attract artists 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.

4.4 Requirement for Visiting International Tattooists to Attend a Convention

The current legislation in NSW requires overseas visiting tattooists to attend a convention in order to work within the state for a period of up to 31days. 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 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.[13]

13 Taskforce on Organised Crime Legislation, p. 373. http://www.justice.qld.gov.au/__

4.5 Licenses

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

The Tattoo Parlours Act NSW and the Tattoo Industry Act QLD allow for two types of licenses to be granted and held by Australian residents residing in these states:

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/QLD on an operator's license. If an operator wishes to work at another studio within the state he/she resides in a full 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.

At the time of writing a tattooist's license in NSW 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.

4.6 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.

data/assets/pdf_file/0017/463022/report-of-the-taskforce-on-organised-crime-legislation.pdf

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.

4.7 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/she 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.[14]
>
> If testing is not required, individuals should not have to pay the full licensing fee in order to obtain a license under this structure.

4.8 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 theses powers have been discussed in section 3.2 of this submission.

Tattoo studios are required under the *Public Heath 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.

4.9 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 proffessionals. 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.

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

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 appliacations.

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.

4.10 Lack of Infrastructure

The lack of staff training in branches of the Department of Fair Trading (DFT) and the Office of Fair Trade (OFT) became apparent when it came to questions regarding the legislation and licensing scheme that were outside of the information listed on their perspective websites. Tattooists continue to deal with staff at these agencies 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 relevant 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 will provide 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. Waiting times 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 un contactable by applicants and often Fair Trade staff are unable to obtain updates on the timeframe or the progress of processing.

4.11 Lack of Communication with Industry

Another common complaint about the licensing process from members of the profession is the lack of notification about new policy or changes to existing policy. 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 eaither 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. Another common occurrence with individuals who have been denied licensure is to have allegations made by the Police that they were tattooing without a license and yet none of the administrating agencies had informed industry participants that a cut of date, that meant you could no longer tattoo whilst you were waiting for your application to be approved had been implemented.

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.

4.12 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.

4.13 Requirement to Display License Number/ New license number on renewal

Under division 24 of the *Tattoo Parlours Act 2012 NSW and Division 3 of the Tattoo Industry Act 2013 QLD* 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 NSW, 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 NSW 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. It also poses the question what are the implications of individuals wearing t-shirts with old license numbers?

4.14 Record Keeping requirements

Under division 41 of the primary Act in NSW 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

requirements imposed on operators and tattooists 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.

Under Division 8, Section 36 of the primary QLD ACT tattoo artists are required to keep a procedures log. The requirements imposed on operators is that the log book must be:

• Written in English;
• Held on the premises at all times (for 3 years) and;
• Easy to access.

The log book must include a record of:

• Dates and times a procedure takes place;
• Who performs it (full name and licence number);
• How much the client paid;
• What method of payment they used;
• Whether a receipt was issued, and the receipt number.

Each Form 9 requires that the tattooist write their name and license number 18 times over on the same sheet (see appendix 1).

The ATG submit that these record keeping obligations are excessive and that no sufficient rationale has been publicly offered to provide evidence as to how these obligations play any role in helping government meet the policy objectives of the Bill.

Tattooists have existing requirements under the Public Health Act to collect the following information:

Client records:

Name address and date of birth of the client;
Date of high-risk personal appearance service procedure performed;
Site and type of high risk personal appearance service procedure;
Operator who provided the service/administered the procedure; and
Instruments used (including details from the packaging of disposable or single-use instruments and reusable instruments such as sterilising batch number, date sterilised and description of the instrument, and

• Sterilisation records:
• Date of instrument's sterilisation;
• Cycles during sterilization process;
• Exposure time and temperature;
• Maintenance and validation certificate

• Staff immunisation eg Hep B
• Staff training and qualifications (training in onsite sterilizing practices and infection control qualification), along with any other training undertaken.
• Needlestick injuries in the workplace

The ATG submit that the current requirements under the licensing acts to record information is duplicated within State Health Guidelines bar the recording of the licenses license number on the form.

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 requirement's place an added and unnecessary burden on industry participants.

4.15 Lack of Industry Consultation

A lack of broad industry consultation prior to the drafting or implementation of the primary Acts in both QLD and NSW 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 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. [8]

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*. Minister Grant has also refused to meet with the ATG to discuss our issues and concerns. The primary *Tattoo Parlours Act* has drawn criticism from legal stakeholders, industry representatives, parliamentry committees, media, academics, civil liberty groups and the general public.

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

5. Consumer Impact

5.1 Public Heath and Safety

An issue that continues to be of grave concern to all stakeholders in relation to tattooing is the safety of the general public.

Licensed amateurs

Due to a gross lack of appropriate pathways for entry to industry within the current licensing regimes in NSW and QLD the industry is now experiencing many new tattoo business opening with operators who have no previous experience or training within the profession.

Despite the tattoo industry having no formal accreditation regarding the wider technical aspects of the art form, it is broadly accepted that any individual who seeks to gain entry into the profession will undertake a period of training under the guidance of a senior tattooist in a professional setting.

The issuing of licenses to individuals with no previous training within the profession has created a huge public health risk. Whilst the current requirement in QLD to obtain cross contamination certification in order to operate provides important and necessary education to entrants to industry it does not educate them around the technical skills necessary to apply a tattoo.

NSW currently has no requirement for entrants to industry to hold the industry standard cross contamination certification.

In the mind of the public a license represents a measure of competency.

Inexperience and a lack of integrity can lead to fibrosis and psychological problems for the client. The growing phenomena of licensed amateurs now operating has also damaged the integrity of the profession due to the application of sub standard work. Small business has also been impacted due to the high number of emerging businesses.

5.2 Tattoo Ink and Related Equipment Via E-Commerce

The unrestricted importation and sale of tattoo inks and associated equipment to the general public via online commerce continues to create health and safety risks. These risks are now being widely documented by medical practitioners, state health departments and professional tattooists alike.
Australia, unlike many countries in the EU, USA and NZ, has no standard or guidelines that ensure that pigments and related equipment imported for personal use into Australia have undergone a screening process – nor is this information available to consumers. As a result there is no certainty about the chemical constituents of pigments sold online, with concerns also around the sterility of the point of origin.

Within the professional tattoo industry, supplies from online platforms such as eBay are rarely if ever utilised – professional tattooists prefer to source equipment from professional supply companies where quality products, which are predominantly manufactured in Europe and the USA, are ensured. Professional supply companies who cater exclusively to professional tattooists, not the general public, are increasingly seeking evidence from manufacturers that the chemical compounds in their pigments have been tested. Many of these manufacturers who produce exclusively for the industry are currently following the protocols of the EU ResAp (2008) to ensure that standards around public safety are maintained. The move for all manufacturers to provide such evidence is strongly supported by both professional supply companies and professional tattooists alike.

In light of this information, it is realistic to assume that the sale of tattoo inks, needles and other related equipment online are to the general public.

Products being sold via online platforms, which are available to the general public, may neglect to monitor or ensure the following minimum standards are met. That

- Products are not sold to minors;
- Products are being labeled correctly;
- Products conform to current safety standards.

A distinct lack of consumer safety and awareness exists on sites selling tattoo related equipment.

eBay, alongside numerous other online traders, are openly providing information to buyers regarding the utilisation of tattoo-related equipment without also providing warnings in regard to the potential hazards associated with its use. The provision of this information to the general public is perceived by professional tattooists, medical practitioners and health departmentsn Nationally as highly irresponsible.

Regulatory Barriers and Goals for e-commerce

NICNAS, a statutory scheme administered by the Australian Government Department of Health, currently lists tattoo inks under the Australian Inventory of Chemical Substances. The importation of these chemicals into Australia is not restricted, other than if they are being imported for industrial use. Tattoo pigments (inks) purchased in smaller amounts online are defined as 'personal imports' and therefore like many other chemicals, are not subject to restrictions.

The creation of a standard for the use of tattoo pigment in Australia would allow for the development of a set of protocols and guidelines which outline best practice for importers, suppliers and tattooists. Regulation may then be developed around this standard, which would look to ensure public health is protected. This has already occurred in many countries within the European Union as well as in NZ and the USA.

The European Council created a resolution to protect public health in member states through a group of proposals – ResAP 2008 – that provide a basis for possible laws and regulations. The main specifications of the resolution are:

- Inks must not endanger the health or safety of persons or the environment;
- A risk evaluation should be performed using recent toxicological data. The evaluation, set out in a dossier, should be made available to the competent authorities;
- Certain aromatic amines must not be present or released by reduction of the pigments using appropriate test methods.

A numbers of these countries, including New Zealand, have now created regulations around this proposal, which restricts the import of tattoo pigments that do not meet the standards as set out in the resolution. Manufacturers of tattoo ink within these countries who supply ink to the professional tattoo industry in Australia are already following the protocols set out by this resolution.

Professional supply companies within Australia who have been consulted in the compiling of this report support the creation of such a standard for Australia as it enables them to hold manufacturers accountable for what their inks contain. A standard of this type in Australia would also mean that professional tattooists could have confidence in the inks that they use.

A product standard of this type would provide government agencies with a basis from which to develop regulation that responsibly protects Australians. It is the recommendation of the ATG that government would then develop policy that restricts the import of such products for sale to the general public.

The ATG and its supplier members hope that the following outcomes may be achieved in the future:

- A national law that regulates the standard of tattoo inks and offers comprehensive coverage;
- Clear obligations to manage risk;
- Clear compliance requirements;
- Adequate sanctions.

The ATG supports the development of dialogue with Standards Australia and state and/or federal governments in an endeavor to see the adoption of such a standard within Australia.

6. Proposals

6.1 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, the Tattoo Industry Act 2013 QLD and the Tattoo Industry Control Act 2015 SA* 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.

6.2 Effective Regulation in other States

Currently in Australia there are two other jurisdictions outside of NSW and QLD that administer regimes that scrutinise entrants to the tattoo industry. The structure of licensing in Hobart, which the ATG favours, is based on health and safety competency.

Hobart, Tasmania

The Hobart local government license skin penetration activities that are considered high risk. These practices must be undertaken in accordance with the provisions of the Public Health Act 1997.[15]

Any person performing skin penetration practices must have a licence to conduct a public health risk activity. You can obtain a licence by completing public health risk activity application form. The premises where a public health risk activity is to be conducted must also be registered by completing a public health risk activity form. Each operator must also submit a questionnaire at the time of applying for registration that is specific to their operation (i.e. tattooing and/or body and ear piercing).[16]

15 *https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-086* (Part 5, Divisions 3 and 4) and the Guidelines for Tattooing http://www.dhhs.tas.gov.au/__data/assets/pdf_file/0020/53327/pehguide_tattoo.pdf

16 See https://www.hobartcity.com.au/Business/Tattooing-and-piercing-businesses

The Hobart council undertake a competency inspection prior to issuing a license. The inspection requires an applicant to set up their equipment and apply a tattoo then clear their tools and clean area in accordance with the provisions and guidelines. There is no requirement under this licensing regime for applicants to undertake a probity test.

It is the opinion of the ATG that the licensing system as is administered by the Hobart council has the potential to benefit industry whilst ensuring public health and safety.

South Australia

South Australia passed the *Tattoo Industry Control Act* in 2015 which, like the Queensland and NSW equivalent legislation, regulates the tattooing industry with the objective of preventing criminal infiltration by automatically disqualifying persons who are members or close associates with members of criminal organisations.
The administrative policy of the Act requires that tattooists and operators of tattoo businesses lodge a notification to the Commissioner of Consumer Affairs.
Businesses that provide tattoo services are required to keep particular records and provide certain information to the Commissioner for Consumer Affairs, such as the name and address of company directors and all employees. There are no up front or ongoing fees.

It is the opinion of the ATG that the system in SA has the ability to meet the policy objectives of the primary Acts in NSW/QLD without damaging the profession or placing an unnecessary regulatory burden upon it.

6.3 Proposals for Future Reform

In addition to the series of recommdations outlined at the start of this submission (see 'Executive Summary'), the following proposals offer suggestions that may 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 tattooists nationally. 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.

7. 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 Australian tattooing 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 modern 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.

8 Appendices

8.1 ATG Mission Statement

The ATG's mission is: solidarity, unity, to respect and protect.

Solidarity. The ATG is made up of professional Australian tattooists who work voluntarily, offering their time and expertise to help ensure a better future for the industry in Australia. We deal with the challenges all tattooists face on a daily basis, we understand those issues intimately and we're passionate about helping others in the same situations.

Unity. One of the challenges facing the tattoo industry in Australia as it moves into an increasingly regulated world is to try to find solutions that suit the majority of practitioners. As an artistic and business community, the tattoo industry has many voices. The ATG is a young, responsive and flexible organisation deeply committed to representing this diversity and working to find the best possible solutions for the majority of Australian tattooists. We are constantly learning, developing and changing to provide stronger and more meaningful consultation with all stakeholders regarding the Guild's activities, and to most accurately represent our members.

Respect. The tattoo industry has a long and rich history in Australia. As we move forward, we must also look backward. The ATG supports any efforts to maintain and honour links with our professional heritage. We have recently introduced an 'Honorary Membership' to commend those elders in the industry who have paved the way for younger practitioners.

Protect. The ATG works tirelessly for its members and potential members in order to protect the industry from unnecessary, arbitrary or burdensome legislation. We have achieved some success in Queensland with the Tattoo Industry Act 2013 (Tattoo Industry Amendment Regulation 2017), representing the industry at meetings, a commission and a public hearing in order to reduce regulatory requirements within that state. We are committed to doing this for tattooists of any state that require our help.