

Passed by both Houses



New South Wales

Tattoo Parlours Amendment Bill 2017

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2017



New South Wales

Tattoo Parlours Amendment Bill 2017

Act No , 2017

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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

Schedule 1 Amendment of Tattoo Parlours Act 2012 No 32

[1] Section 3 Definitions

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

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

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

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

[3] Section 13A

Insert after section 13:

13A Renewal of licence

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

- (4) Division 3 applies to an application for renewal of a licence in the same way as it applies to an application for a licence.

Note. The Commissioner is required to make a security determination under Division 3 in relation to an application for the renewal of a licence that is referred to the Commissioner only if the application includes changes relating to the close associates of the licensee or the licensed premises—see section 14 (2).

- (5) A licence may be renewed on more than one occasion.
- (6) Section 12 of the *Criminal Records Act 1991* does not apply in relation to an application for the renewal of a licence.

[4] Sections 14 and 27 (3)

Insert “or for the renewal of a licence” after “an application for a licence” wherever occurring.

[5] Section 14 Investigations, inquiries and referrals in relation to licence applications

Omit “either or both” from section 14 (b). Insert instead “any one or more”.

[6] Section 14 (b) (i)

Omit “to be granted the licence”.

[7] Section 14 (b) (ia)

Insert after section 14 (b) (i):

- (ia) whether a close associate of the applicant is a fit and proper person,

[8] Sections 14 (b) (ii) and 27 (2)

Insert “or renewed” after “granted” wherever occurring.

[9] Section 14 (2)

Insert at the end of section 14:

- (2) However, an application for the renewal of a licence is required to be referred to the Commissioner only if the application includes any changes relating to:
- (a) the close associates of the licensee, or
- (b) the licensed premises at which the licensee carries on a body art tattooing business.

[10] Section 15 Secretary or Commissioner may require further information

Insert “or for the renewal of a licence” after “an applicant for a licence” in section 15 (1).

[11] Section 16 Decision of Secretary in relation to licence applications

Insert “or for the renewal of a licence” after “application for a licence” wherever occurring in section 16 (1) and (2).

[12] Sections 16 (1), (3) and (4) and 27 (4)

Insert “or renew” after “grant” wherever occurring.

[13] Section 16 (3) (a)

Insert “or for the renewal of the licence” after “application for the licence”.

[14] Section 16 (4)

Insert “or the licensed premises” after “proposed licensed premises” wherever occurring.

[15] Section 16 (4) (b)

Omit “has not been granted”. Insert instead “is not in force”.

[16] Section 16 (5)

Insert “or renewal” after “granting”.

[17] Section 17

Omit the section. Insert instead:

17 Duration of licence

- (1) A licence (other than a renewed licence) comes into force on the date specified in the licence.
- (2) A renewed licence comes into force on the date following the expiry date of the licence it renews.
- (3) A licence remains in force for a period of 3 years from the date on which it comes into force unless it is sooner cancelled or surrendered or otherwise ceases to be in force.
Note. A licence may also cease to be in force by operation of section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.
- (4) A licence suspended under this or any other Act is taken not to be in force for the purposes of this Act during the period of the suspension. However, the suspension of a licence does not affect the term of the licence.

[18] Section 19 Commissioner to make security determinations about applicants and licensees

Omit “either or both” wherever occurring in section 19 (1) and (2).

Insert instead “any one or more”.

[19] Section 19 (1) (a1)

Insert after section 19 (1) (a):

- (a1) whether a close associate of the applicant is a fit and proper person,

[20] Section 19 (2) (a1)

Insert after section 19 (2) (a):

- (a1) whether a close associate of the licensee continues to be a fit and proper person,

[21] Section 19 (4)

Insert after section 19 (3):

- (4) For the purpose of making a determination on a matter referred to in subsection (1) or (2) and without limiting subsection (3), the Commissioner may consider the following:
 - (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*,
 - (b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged,

- (c) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.

[22] Section 19A Commissioner may require further information

Omit “as to whether a licensee continues to be a fit and proper person to hold a licence, or whether it would be contrary to the public interest for the licensee to continue to hold a licence, the Commissioner may, by written notice served on the person concerned, require a licensee, or a close associate of a licensee,” from section 19A (1).

Insert instead “in relation to any of the matters referred to in section 19 (2), the Commissioner may, by notice in writing served on the licensee or close associate concerned, require the licensee or close associate”.

[23] Section 20 Disclosure of criminal intelligence information

Omit “under section 19” from section 20 (1).

Insert instead “or taking other action under this Act (including in making a report to the Secretary under section 19)”.

[24] Section 20 (1)

Omit “as referred to in section 19 (3)”.

[25] Section 20 (2)

Omit “as referred to in section 19 (3)”. Insert instead “provided by the Commissioner”.

[26] Part 3, Division 4, heading

Omit “**Special conditions relating to operator licences**”.

Insert instead “**Miscellaneous licence conditions**”.

[27] Section 22 Change of licence particulars

Omit “an operator licence” from section 22 (1). Insert instead “a licence”.

[28] Section 22 (1)

Omit “in respect of a licence”. Insert instead “in respect of the licence”.

[29] Section 22 (1)

Insert “, in the case of an operator licence,” after “licensee and”.

[30] Section 22 (1A)

Insert after section 22 (1):

- (1A) The notice of a change in the particulars relating to the close associates of the holder of an operator licence must be accompanied by copies of 3 forms of personal identification of an approved kind for each individual identified as a close associate in that notice.

[31] Section 26 Cancellation of licence

Omit section 26 (1) (a). Insert instead:

- (a) the licensee or a close associate of the licensee has failed to comply with a requirement of a notice under section 19A and the Secretary has been notified by the Commissioner of that failure, or

[32] Section 26 (2) (a1)

Insert after section 26 (2) (a):

- (a1) if, within 60 days of being notified of the grant or renewal of the licence, the licensee fails to collect the licence from the place nominated by the Secretary, or

[33] Section 26 (3)

Insert “or on the ground referred to in subsection (2) (a1)” after “about the licensee”.

[34] Section 27 Right to seek administrative review from Civil and Administrative Tribunal

Omit “(other than by operation of section 26 (1) (a))” from section 27 (1) (a).

[35] Section 27 (1) (a1)

Insert after section 27 (1) (a):

- (a1) the refusal or failure by the Secretary to renew a licence granted to the person,

[36] Section 27 (1) (c)

Insert “(other than on the ground referred to in section 26 (2) (a1))” after “cancellation”.

[37] Section 27 (2)

Insert “or renewal” after “the grant”.

[38] Section 27 (3) and (4)

Insert “or a close associate of the applicant” after “about the applicant for the administrative review” wherever occurring.

[39] Section 27 (4) (a)

Omit the paragraph. Insert instead:

- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information without the approval of the Commissioner, and

[40] Section 27 (4) (note)

Omit “referred to in section 19 (3)”.

[41] Section 27 (4A)

Omit “identified in the Commissioner’s determination as being from a criminal intelligence report or other criminal information referred to in section 19 (3)”.

Insert instead “contained in a criminal intelligence report or other criminal information”.

[42] Section 30C Powers that may be exercised by authorised officers on entry

Insert after section 30C (1) (c):

- (c1) make such examinations and inquiries as the authorised officer considers necessary,

[43] Section 33A

Insert after section 33:

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

(1) Warning to be given on each occasion

A person is not guilty of an offence of failing to comply with a requirement under section 19A or 30C to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(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.

(3) Information or answer not admissible if objection made

However, any information furnished or answer given by a natural person in compliance with a requirement under section 19A or 30C is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 33) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

(4) Records admissible

Any record furnished by a person in compliance with a requirement under section 19A or 30C is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) Further information

Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under section 19A or 30C is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

[44] Section 35

Omit the section. Insert instead:

35 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

[45] Section 39

Omit the section. Insert instead:

39 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
 - (a) in the case of an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
 - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
 - (e) by email to an email address specified by the person for the service of documents of that kind,
 - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, *serve* includes give or send.

[46] Schedule 1 Savings, transitional and other provisions

Insert after Part 3:

Part 4 Provisions consequent on enactment of Tattoo Parlours Amendment Act 2017

6 Pending applications for licence renewals

- (1) This clause applies in relation to an application (a *pending application*) that was made, but not finally determined, before the commencement of the *Tattoo Parlours Amendment Act 2017* by the holder of a licence (the *existing licence*) for a new licence to replace the existing licence that is due to expire.

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