

# Tattoo Industry Act 2012 No 32

[2012-32]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Tattoo Parlours Act 2012

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Tattoo Industry Act 2012 No 32



New South Wales

## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
3 Definitions .....	6
4 Meaning of “close associate” .....	9
4A Prescribed criminal organisations .....	10
5 Relationship of Act to other laws .....	10
<b>Part 2 Offences relating to unlicensed body art tattooing</b> .....	10
6 Body art tattooing businesses to be licensed .....	10
7 Body art tattooists to be licensed .....	11
8 Employed body art tattooists to be licensed or hold permit .....	12
8A Advertising body art tattooing .....	13
<b>Part 3 Licensing scheme</b> .....	14
<b>Division 1 General</b> .....	14
9 Types of licences and authorisation conferred by licence .....	14
10 Licence conditions—general provisions .....	14
<b>Division 2 Licence and permit applications and granting of licences</b> .....	15
11 Licence applications .....	15
12 Statement as to close associates of applicant for master licence .....	16

13 Fingerprinting and palm printing of applicants .....	17
13A Renewal of licence.....	18
13B Restoration of licence .....	18
14 Investigations, inquiries and determinations in relation to licence or permit applications .....	19
15 Commissioner may require further information.....	19
16 Decision of Commissioner in relation to licence applications .....	20
17 Duration of licence .....	22
18 Form of licence .....	22
<b>Division 3 Investigations, inquiries and determinations for existing licensees</b>	
.....	22
19 Commissioner may investigate, inquire and make determinations about licensees or permit holders .....	22
.....	22
19A Commissioner may require further information.....	23
<b>Division 3A Investigations, inquiries and determinations—administration</b>	
.....	24
19B Information for determinations.....	24
20 Disclosure of criminal intelligence information.....	24
<b>Division 4 Miscellaneous licence conditions .....</b>	<b>25</b>
21 Inspection of financial records.....	25
22 Change of licence particulars .....	25
22A Master licence holder not to permit procedures by certain persons on licensed premises .....	26
23 Changes in staff members.....	26
24 Display of licence information .....	26
<b>Division 5 Suspension and cancellation of licences.....</b>	<b>26</b>
25 Suspension of licence .....	26
26 Cancellation of licence.....	27
<b>Division 5A Permits relating to unlicensed body art tattooing.....</b>	<b>28</b>
26A Visiting tattooist permits .....	28
26B Application for visiting tattooist permit .....	28
26C Decisions about application for visiting tattooist permit .....	29

26D Form of permit .....	29
26E Cancelling or suspending a visiting tattooist permit.....	29
<b>Division 6 Review of decisions</b> .....	29
27 Right to seek administrative review from Civil and Administrative Tribunal .....	29
<b>Part 4 Enforcement</b> .....	31
<b>Division 1 Closure orders</b> .....	31
28 Interim closure of unlicensed or illegal tattoo parlours .....	31
29 Long term closure of tattoo parlours .....	32
30 Body art tattooing business may not be carried on in closed premises.....	32
<b>Division 2 Powers of entry</b> .....	32
30A Powers of authorised officers to enter premises without warrant.....	32
30B Powers of authorised officers to enter premises with warrant.....	33
30C Powers that may be exercised by authorised officers on entry .....	33
31 Police powers of entry with dog.....	34
<b>Division 2A Power to obtain information or records in relation to advertising offence</b> .....	34
31A Application of Division .....	34
31B Requirement to provide information and records .....	35
31C Power of authorised officers to require answers and record evidence .....	35
<b>Division 3 Other enforcement provisions</b> .....	36
32 Production of licences and permits.....	36
32A Identification of certain authorised officers .....	36
33 Hindering or obstruction of authorised officer .....	36
33A Provisions relating to requirements to give records or information or answer questions .....	36
34 Nature of proceedings for offences.....	37
35 Penalty notices .....	37
35A Offence of altering, damaging or destroying records and other things .....	38
35B Offence of providing false or misleading information .....	38
35C Offence of conspiring to commit offence.....	38

35D Offence of inducing commission of offence.....	38
<b>Part 5 Miscellaneous</b> .....	<b>39</b>
36 Exchange of information.....	39
36A Certificate evidence .....	39
37 No compensation payable for exercise of regulatory functions .....	40
38 Delegations .....	40
39 Service of documents .....	41
40 Provision of documents to Commissioner.....	41
41 Regulations.....	42
42 Review of Act.....	42
<b>Schedule 1 Savings, transitional and other provisions</b> .....	<b>43</b>
<b>Schedule 2 (Repealed)</b> .....	<b>47</b>

# Tattoo Industry Act 2012 No 32



New South Wales

An Act to provide for the licensing and regulation of body art tattooing businesses and body art tattooists.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Tattoo Industry Act 2012*.

### 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Part 2 commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act—

**approved** means approved by the Commissioner.

**authorised officer** means any of the following—

- (a) a police officer,
- (b) a member of the NSW Police Force, other than a police officer, who is authorised by the Commissioner in writing to exercise the functions of an authorised officer under this Act,
- (c) any other person (or person belonging to a class of persons) prescribed by the regulations for the purposes of the provision in which the expression is used or generally.

**body art tattooing business** means a business involving the carrying out of body art tattooing procedures (whether or not in combination with other tattooing procedures or with other activities).

**body art tattooing procedure** means a tattooing procedure performed for

decorative purposes, but does not include a cosmetic tattooing procedure.

**body art tattooist** means an individual who performs body art tattooing procedures.

**business day** means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

**close associate**—see section 4.

**closure order**, in relation to premises, means an order made under section 28 or 29.

**Commissioner** means the Commissioner of Police.

**controlled member** of a declared organisation has the same meaning as in the [Crimes \(Criminal Organisations Control\) Act 2012](#).

**cosmetic tattooing procedure** means any of the following—

- (a) a tattooing procedure performed for the purpose of providing the individual on whom it is performed with an eyeliner, eyebrows or any other make up effect on a permanent basis,
- (b) a tattooing procedure performed by a medical practitioner or for a medical reason (for example, to hide, disguise or correct a medical condition or a post-operative outcome),
- (c) any tattooing procedure performed for any other purpose, or in any other circumstances, prescribed by the regulations.

**disqualifying offence** means an offence prescribed by the regulations to be a disqualifying offence for—

- (a) all licences and permits, or
- (b) a type of licence or permit.

**employ** includes engage under a contract for services or as an apprentice.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**interim closure order**, in relation to premises, means an order made under section 28.

**licence** means a licence under this Act.

**licence number**, for a licence, means the number included in the licence under section 18.

**licensed premises**, in relation to a master licence, means the premises to which the

licence relates.

**licensee** means the holder of a licence.

**master licence**—see section 9.

**member**, of a prescribed criminal organisation, includes the following—

- (a) a director or an officer of the organisation,
- (b) an associate member or prospective member, however described, of the organisation,
- (c) a person who identifies in some way with the organisation, including by wearing or carrying clothing, jewellery or an accessory displaying—
  - (i) the colours, club patch, insignia or image of a prescribed criminal organisation, or
  - (ii) an image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a prescribed criminal organisation,
- (d) a person who is treated by the organisation, or persons who belong to the organisation in some way, as if the person belongs to the organisation.

**permanent Australian resident** means a person resident in Australia whose continued presence in Australia is not subject to a limitation as to time imposed by or in accordance with law.

**permit** means a permit under this Act or the regulations.

**permit number**, for a visiting tattooist permit, means the permit number included in the permit under section 26D.

**prescribed criminal organisation**—see section 4A.

**serious criminal offence** means an offence committed in New South Wales that is punishable by imprisonment for 2 years or more or an offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable.

**staff member**, in relation to premises, means an individual employed to work at those premises.

**tattooing procedure** means any procedure involving the making of a permanent mark on or in the skin of a person by means of ink, dye or any other colouring agent.

**tattooist licence**—see section 9.



**visiting tattooist permit**—see section 26A(1).

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) The regulations may make provision for or with respect to the circumstances in which the performing of a tattooing procedure is taken (or is not taken) to be for medical reasons for the purposes of paragraph (b) of the definition of **cosmetic tattooing procedure** in subsection (1).
- (3) Notes included in this Act do not form part of this Act.

**4 Meaning of “close associate”**

- (1) For the purposes of this Act, a person is a **close associate** of an applicant for a licence or a licensee if the person—
  - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person’s own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) to exercise a significant influence over or with respect to the management or operation of that business, or
  - (b) holds or will hold any relevant position, whether in the person’s own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence, or
  - (c) is or will be engaged as a contractor or employed in the business of the applicant or licensee that is or will be carried on under the authority of the licence.
- (2) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.
- (3) The provisions of this section extend to relevant financial interests and relevant powers even if those interests and powers are not payable, exercisable or otherwise enforceable as a matter of law or equity, but are nevertheless payable, exercisable or otherwise enforceable as a matter of fact.
- (4) In this section—

**relevant financial interest**, in relation to a business, means—

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the

business, whether the entitlement arises at law or in equity or otherwise, or

- (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of the premises at which the business is carried on to receive rent as lessor of the premises).

**relevant position** means—

- (a) the position of director, manager or secretary, or
- (b) any other position, however designated, if it is an executive position.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

#### **4A Prescribed criminal organisations**

- (1) The regulations may prescribe an incorporated body or unincorporated group, however structured, to be a **prescribed criminal organisation**.
- (2) The body or group may be prescribed whether or not the body or group is—
  - (a) based outside New South Wales, or
  - (b) consists of persons who are not ordinarily resident in New South Wales.
- (3) The Minister must consider the advice of the Commissioner before recommending the making of a regulation that prescribes a body or group to be a prescribed criminal organisation.

#### **5 Relationship of Act to other laws**

Nothing in this Act limits any requirement imposed by or under the [Environmental Planning and Assessment Act 1979](#), the [Public Health Act 2010](#) or any other Act or law with respect to the carrying out of tattooing procedures or the carrying on of body art tattooing businesses.

## **Part 2 Offences relating to unlicensed body art tattooing**

### **6 Body art tattooing businesses to be licensed**

- (1) A person must not carry on a body art tattooing business (whether on the person's own behalf or on behalf of another person) at any premises unless the person is authorised to do so by a master licence.

Maximum penalty—

- (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
  - (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.
- (2) If a body art tattooing business is carried on (or is proposed to be carried on) at more than one set of premises, a separate master licence is required to be held by a person for each set of premises for the purposes of subsection (1).
- (3) A person that requires, allows or permits a body art tattooing business to be carried on at premises on the person's behalf in contravention of subsection (1) is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
  - (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.
- (4) Subsection (1) does not apply to a person carrying on a body art tattooing business—
- (a) during the period of 7 business days after the death of a licensee who holds a master licence for the premises and, if a new application for a master licence is made during that period, until that application is determined by the Commissioner, or
  - (b) during the period of 7 business days after a licensee who holds a master licence for the premises becomes unable to carry on the business because he or she is incapacitated and, if a new application is made by another person for a master licence for the premises during that period, until that application is determined by the Commissioner, or
  - (c) in such other circumstances as may be prescribed by the regulations.
- (5) It is a defence in proceedings for an offence against subsection (3) if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that the body art tattooing business was not being carried on under the authority of a master licence.

## **7 Body art tattooists to be licensed**

- (1) An individual must not perform any body art tattooing procedure for fee or reward unless authorised to do so by a tattooist licence.

Maximum penalty—

- (a) for a first offence, 50 penalty units, and
- (b) for a second or subsequent offence, 100 penalty units.

(1A) An individual must not perform any body art tattooing procedure (whether or not for fee or reward) at premises in respect of which a master licence is in force unless authorised to do so by a tattooist licence.

Maximum penalty—

- (a) for a first offence, 50 penalty units, and
- (b) for a second or subsequent offence, 100 penalty units.

(1B) An individual is not liable to be convicted of an offence under both subsections (1) and (1A) in respect of essentially the same act or omission.

(2) Subsections (1) and (1A) do not apply to an individual who performs a body art tattooing procedure—

- (a) if the individual carries out the procedure as a self-employed individual at premises for which the individual holds a master licence, or
  - (a1) if the individual performs the procedure under a visiting tattooist permit, or
  - (b) in such other circumstances as may be prescribed by the regulations.

## **8 Employed body art tattooists to be licensed or hold permit**

(1) A person must not employ an individual to work as a body art tattooist unless the individual is the holder of a tattooist licence or a visiting tattooist permit.

Maximum penalty—

- (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
- (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.

(2) It is a defence in proceedings for an offence against this section if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that the individual employed to work as a body art tattooist was unlicensed or did not hold a visiting tattooist permit.

(3) Subsection (1) does not apply to the employment of an individual to work as a body art tattooist in such circumstances as may be prescribed by the regulations.

## **8A Advertising body art tattooing**

- (1) A person must not advertise that the person carries on a body art tattooing business at premises unless the person is the holder of a master licence.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) for an individual—50 penalty units.

- (2) The holder of a master licence must ensure an advertisement for the holder's body art tattooing business includes the licence number for the master licence to which the advertisement relates.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) for an individual—50 penalty units.

- (3) A person must not advertise that the person performs, or is willing to perform, a body art tattooing procedure referred to in the advertisement unless the person is—

- (a) an individual who carries out the procedure as a self-employed individual at premises for which the individual holds a master licence, or
- (b) the holder of—
  - (i) a tattooist licence, or
  - (ii) a permit.

Maximum penalty—50 penalty units.

- (4) An individual who carries out a body art tattooing procedure as a self-employed individual must ensure that an advertisement for a body art tattooing procedure performed by the individual contains the licence number for the master licence to which the advertisement relates.

Maximum penalty—50 penalty units.

- (5) The holder of a tattooist licence or the holder of a permit must ensure an advertisement for a body art tattooing procedure performed by the holder contains the licence number or permit number for the holder to whom the advertisement relates.

Maximum penalty—50 penalty units.

- (6) In this section—

**advertisement** includes a reference to any form of notice or statement in the nature of an advertisement.

**Example of an advertisement—**

a notice or statement on a social media platform that takes the nature of an advertisement about the performance of a body art tattooing procedure

## **Part 3 Licensing scheme**

### **Division 1 General**

#### **9 Types of licences and authorisation conferred by licence**

- (1) The following kinds of licence may be granted and held under this Act—
  - (a) a master licence,
  - (b) a tattooist licence.
- (2) A master licence authorises the licensee to carry on a body art tattooing business (whether on his or her own behalf or on behalf of another person) at the premises specified in the licence in accordance with this Act and the conditions of the licence.
- (3) A tattooist licence authorises the licensee to perform body art tattooing procedures in accordance with this Act and the conditions of the licence.
- (4) The authorisation conferred by a licence is subject to this Act and the regulations.

#### **10 Licence conditions—general provisions**

- (1) A licence is subject to—
  - (a) such conditions as may be imposed by the Commissioner under this Act (whether at the time the licence is granted or at any later time), and
  - (b) such conditions as are imposed by this Act or prescribed by the regulations.
- (2) Subject to subsection (4), the Commissioner may impose, vary or revoke conditions on a licence for such reasons, and in such circumstances, as the Commissioner considers appropriate or necessary.
- (3) The Commissioner may—
  - (a) impose a condition at the time the licence is granted by specifying it on the licence that is issued, and
  - (b) impose, vary or revoke conditions on a licence after it is granted by written notice served on the licensee.
- (4) Nothing in this section authorises the Commissioner—

- (a) to impose a condition that is inconsistent with a condition imposed by this Act or the regulations, or
  - (b) to vary or revoke a condition imposed by this Act or the regulations.
- (5) A licensee must comply with any conditions to which the licence is subject.
- Maximum penalty (subsection (5)): 20 penalty units.

## **Division 2 Licence and permit applications and granting of licences**

### **11 Licence applications**

- (1) An application for a licence is to be made to the Commissioner.
- (2) An application for a licence may only be made by an individual.

**Note—**

See Part 5A of the [Crimes Act 1900](#) for offences with respect to the making of false and misleading applications, information and documentation.

- (3) An application for a master licence in connection with a body art tattooing business that is owned or operated by or on behalf of a corporation, partnership or trust must be made by an individual nominated by the corporation, partners or trustees to be the premises manager for the purposes of carrying on that business at the premises for which the licence is sought.
- (4) An application for a licence may not be made by—
  - (a) an individual who is under the age of 18 years, or
  - (b) an individual who is not an Australian citizen or a permanent Australian resident, or
  - (c) an individual who is a controlled member of a declared organisation.

**Note—**

Controlled members are prohibited from applying for licences—see section 27 of the [Crimes \(Criminal Organisations Control\) Act 2012](#).

- (5) An application for a licence must—
  - (a) be in the approved form and manner, and
  - (b) state the full name and residential address of the applicant, and
  - (b1) 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
  - (c) in the case of a master licence—

- (i) specify the address of the proposed licensed premises, and
  - (ii) specify the names and residential addresses of each staff member employed (or, if no staff members are currently employed, proposed to be employed) to work at the proposed licensed premises, and
  - (iii) if the business to which the application relates is owned or operated by or on behalf of a corporation, partnership or trust—be accompanied by evidence in the approved form and manner that the applicant has been nominated by the corporation, partners or trustees to be the premises manager, and
- (d) in the case of a tattooist licence—be accompanied by evidence in the approved form and manner concerning previous, existing or impending employment as a body art tattooist (including employment as an apprentice), and
- (e) be accompanied by the fee prescribed by the regulations and such other information and particulars as may be prescribed by the regulations, and
- (f) comply with such other requirements as may be prescribed by the regulations.

**Note—**

See also section 12 for the requirement to provide a statement as to close associates of an applicant for a master licence.

- (6) If, before an application for a licence is determined by the Commissioner, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must within 7 business days of the change give written notice to the Commissioner of the particulars of the change.

Maximum penalty (subsection (6)): 20 penalty units.

- (7) Section 12 of the [Criminal Records Act 1991](#) does not apply in relation to an application for a licence.

**12 Statement as to close associates of applicant for master licence**

- (1) An application for a master licence or for the renewal of a master licence must be accompanied by a written statement in the approved form, made by the applicant, specifying—
- (a) that the applicant has made all reasonable inquiries to ascertain the information required to complete the statement, and
  - (b) the following information about any close associates of the applicant—
    - (i) if the associate is an individual—the individual’s name and date of birth,
    - (ii) if the associate is a proprietary company—the name and ACN of the company



and the names of its directors and shareholders,

- (iii) if the associate is any other kind of corporation—the name of the corporation, its ACN or ARBN (if any) and the names of the directors or members of its governing body,
- (iv) if the associate is a partnership—the trading name of the partnership and the names of the partners (including any silent partners),
- (v) if the associate is a trust—the names of the trustee or trustees and, if a trustee is a proprietary company or other corporation, the information referred to in subparagraphs (ii) and (iii) concerning its management and shareholders.

(2) The regulations may provide for exceptions to this section.

(3) In this section—

**ACN, ARBN** and **proprietary company** have the same meanings as they have in the [Corporations Act 2001](#) of the Commonwealth.

### **13 Fingerprinting and palm printing of applicants**

- (1) An applicant for a licence must consent to having his or her fingerprints and palm prints taken by a police officer in order to confirm the applicant's identity.
- (2) The Commissioner must refuse to determine an application for a licence if the applicant refuses to be fingerprinted and palm printed.
- (3) Any fingerprints or palm prints obtained from an applicant in accordance with this section who is granted a licence may be used by the Commissioner for any purpose that the Commissioner sees fit.
- (4) A person who formerly held a licence, but is not currently a licensee, may apply to the Commissioner to have any of his or her fingerprints or palm prints obtained in accordance with this section and any copies of them destroyed.
- (5) The Commissioner may grant or refuse an application under subsection (4) as the Commissioner sees fit.
- (6) If an application for a licence is withdrawn or refused, the Commissioner is to ensure that any fingerprints or palm prints that are obtained in accordance with this section, and any copies of them, are destroyed as soon as is practicable after the application is withdrawn or refused.
- (7) As soon as practicable after any fingerprints or palm prints (or any copies of them) are destroyed in accordance with subsection (6), the Commissioner is to notify the applicant in writing that those fingerprints or palm prints (and those copies, if any) have been destroyed.

### **13A Renewal of licence**

- (1) An application for the renewal of a licence may be made to the Commissioner 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 Commissioner 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 Commissioner.
- (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.
- (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.

### **13B Restoration of licence**

- (1) An application for the restoration of a licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the Commissioner on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the Commissioner may extend the period within which an application for the restoration of a licence may be made if the Commissioner is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or

- (b) it is just and equitable to restore the licence.
- (3) A licence that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.
- (5) A licence restored at any time is taken to have been restored from the day on which the licence expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a licence in the same way as it applies to an application for a licence.

#### **14 Investigations, inquiries and determinations in relation to licence or permit applications**

If the Commissioner receives an application for a licence or permit, or for the renewal or restoration of a licence, the Commissioner may carry out the investigations or inquiries in relation to the application the Commissioner considers necessary for a proper consideration of the application, including in relation to the following matters—

- (a) whether the applicant is a fit and proper person to hold a licence or permit,
- (b) whether a close associate of the applicant is a fit and proper person,
- (c) whether it would be contrary to the public interest for—
  - (i) the licence to be granted, renewed or restored, or
  - (ii) the permit to be granted,
- (d) whether the applicant has, within the period of 10 years before the application was made, been convicted in New South Wales or elsewhere, of a disqualifying offence for the type of licence or permit applied for, whether or not the offence is an offence under New South Wales law,
- (e) whether the applicant—
  - (i) is a member of a prescribed criminal organisation, or
  - (ii) was a member of a prescribed criminal organisation in the 12 months before making the application.

#### **15 Commissioner may require further information**

- (1) The Commissioner may, by written notice served on the person concerned, require an

applicant for a licence or for the renewal or restoration of a licence, or a close associate of the applicant, to do one or more of the following things—

- (a) provide, in accordance with directions in the notice, such information as, in the opinion of the Commissioner, is relevant to the investigation of the application and is specified in the notice,
  - (b) produce, in accordance with directions in the notice, such records as, in the opinion of the Commissioner, are relevant to the investigation of the application and permit examination of the records, the taking of extracts from them and the making of copies of them,
  - (c) authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),
  - (d) give to the Commissioner such authorisations and consents as the Commissioner requires for the purpose of enabling the Commissioner to obtain information (including financial and other confidential information) from other persons concerning the applicant and the applicant's associates.
- (2) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.
- (3) The Commissioner may refuse to determine an application if a requirement made under this section in relation to the application is not complied with.

## **16 Decision of Commissioner in relation to licence applications**

- (1) The Commissioner may, after considering an application for a licence or for the renewal or restoration of a licence—
  - (a) grant, renew or restore the licence, or
  - (b) refuse to grant, renew or restore the licence.
- (2) The Commissioner may, in such circumstances as the Commissioner considers appropriate, treat an application for a licence or for the renewal or restoration of a licence as having been withdrawn.
- (3) The Commissioner must not grant, renew or restore a licence if—
  - (a) the Commissioner is satisfied the application for the licence or for the renewal or restoration of the licence was not properly made, or
  - (b) the applicant is a controlled member of a declared organisation, or

### **Note—**

Controlled members are prohibited from applying for licences—see the [Crimes \(Criminal Organisations Control\) Act 2012](#), section 27.

- (c) the Commissioner is satisfied the applicant is not a fit and proper person to be granted a licence, or to have a licence renewed or restored, or
  - (d) the Commissioner is satisfied a close associate of the applicant is not a fit and proper person, or
  - (e) the Commissioner is satisfied it would be contrary to the public interest for the applicant to be granted a licence, or have a licence renewed or restored, or
  - (f) the Commissioner is satisfied the applicant had, within the period of 10 years before the application was made, been convicted in New South Wales or elsewhere of a disqualifying offence for the type of licence applied for, whether or not the offence is an offence under New South Wales law, or
  - (g) the Commissioner is satisfied the applicant—
    - (i) is a member of a prescribed criminal organisation, or
    - (ii) was a member of a prescribed criminal organisation in the 12 months before the application was made.
- (4) Without limiting subsection (1), the Commissioner may refuse to grant, renew or restore a master licence if the Commissioner is satisfied that—
- (a) a prohibition order under Part 3 of the *Public Health Act 2010* in connection with the carrying out of skin penetration procedures is in force in respect of the proposed licensed premises or the licensed premises, or
  - (b) development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A or Part 5.1 of that Act is required) to use the proposed licensed premises or the licensed premises for the purposes of carrying on the body art tattooing business and such consent or approval has been refused or is not in force.
- (5) The regulations may also provide mandatory or discretionary grounds for refusing the granting, renewal or restoration of a licence.
- (6) A licence confers no right of property and is incapable of being transferred, assigned or mortgaged, charged or otherwise encumbered.

**Note—**

A non-transferable licence is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth. See the definitions of **licence** and **personal property** in section 10 of that Act.

- (7) (Repealed)

## 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) An application for a licence or renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (3A) The Commissioner may grant or renew a licence for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.

### Note—

A licence may cease to be in force by operation of section 27 of the [Crimes \(Criminal Organisations Control\) Act 2012](#).

- (3B) If an application for renewal of a licence has been made but the application is not finally determined by the Commissioner before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (3C) If a licence is granted or renewed for a shorter term than the nominated term, the Commissioner is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (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.
- (5) Subsections (3A)–(3C) do not affect the term of any licence granted under this Act and in force immediately before the amendment of this section by the [Fair Trading Legislation Amendment \(Reform\) Act 2018](#).

## 18 Form of licence

A licence is to be in the approved form and contain a licence number.

## Division 3 Investigations, inquiries and determinations for existing licensees

### 19 Commissioner may investigate, inquire and make determinations about licensees or

**permit holders**

The Commissioner may investigate, inquire into and determine one or more of the following matters—

- (a) whether a licensee or permit holder continues to be a fit and proper person to hold a licence or permit,
- (b) whether a close associate of a licensee or permit holder continues to be a fit and proper person,
- (c) whether it would be contrary to the public interest for a licensee or permit holder to continue to hold the licence or permit,
- (d) whether a licensee or permit holder has been convicted of a disqualifying offence,
- (e) whether a licensee or permit holder—
  - (i) is a member of a prescribed criminal organisation, or
  - (ii) was a member of a prescribed criminal organisation in the period of 12 months before the investigation or inquiry.

**19A Commissioner may require further information**

- (1) For the purpose of an investigation by the Commissioner in relation to any of the matters referred to in section 19, the Commissioner may, by notice in writing served on the licensee or close associate concerned, require the licensee or close associate to do one or more of the following things—
  - (a) provide, in accordance with directions in the notice, such information as, in the opinion of the Commissioner, is relevant to the investigation specified in the notice,
  - (b) produce, in accordance with directions in the notice, such records as, in the opinion of the Commissioner, are relevant to the investigation and permit examination of the records, the taking of extracts from them and the making of copies of them,
  - (c) authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),
  - (d) give to the Commissioner such authorisations and consents as the Commissioner requires for the purpose of enabling the Commissioner to obtain information (including financial and other confidential information) relevant to the investigation from other persons concerning the licensee and close associates of the licensee.
- (2) A person who complies with a requirement of a notice under this section does not on

that account incur a liability to another person.

## **Division 3A Investigations, inquiries and determinations—administration**

### **19B Information for determinations**

- (1) This section applies for the purpose of making a determination on a matter referred to in section 14 or 19.
- (2) The Commissioner may have regard to a criminal intelligence report or other criminal information held in relation to the applicant, licensee or permit holder, or a close associate of the applicant, licensee or permit holder, that—
  - (a) is relevant to the business or procedures proposed to be carried on or performed, or carried on or performed, under the licence or permit, or
  - (b) causes the Commissioner to conclude improper conduct is likely to occur if—
    - (i) the applicant were granted the licence or permit, or
    - (ii) the licensee or permit holder continued to hold the licence or permit, or
  - (c) causes the Commissioner to lack confidence that improper conduct will not occur if—
    - (i) the applicant were granted the licence or permit, or
    - (ii) the licensee or permit holder continued to hold the licence or permit.
- (3) Without limiting subsection (2), 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 the *Crimes Act 1900*, section 579.

### **20 Disclosure of criminal intelligence information**

The Commissioner is not, under this Act or another Act or law, required to give reasons for the following, if the giving of the reasons would disclose the existence or content of a criminal intelligence report or other criminal information—

- (a) not granting a licence or permit to a person,
- (b) refusing to renew or restore a licence to a person,



- (c) suspending or cancelling the licence or permit of a person.

## **Division 4 Miscellaneous licence conditions**

### **21 Inspection of financial records**

- (1) It is a condition of a master licence that the licensee must ensure that the requirements of this section concerning the financial records used, received or produced in connection with the carrying on of a body art tattooing business at licensed premises (the **business financial records**) are complied with.
- (2) The business financial records must be made available for inspection by an authorised officer at the place at which they are kept at any reasonable time requested by the officer by written notice served on the licensee.
- (3) An authorised officer inspecting the business financial records must be permitted to take copies of, or take extracts or make notes from, those records.
- (4) In this section—

**financial records** includes (whether in printed or electronic form)—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers, and
- (b) documents of prime entry, and
- (c) working papers and other documents needed to explain—
  - (i) the methods by which financial statements (such as profit and loss statements, balance sheets and cash flow statements) are made up, and
  - (ii) adjustments to be made in preparing financial statements.

### **22 Change of licence particulars**

- (1) It is a condition of a licence that the licensee must give written notice to the Commissioner of a change in any of the particulars in respect of the licence (including any change of residential address by the licensee and, in the case of a master licence, any change in the particulars relating to the close associates of the licensee), and of the appropriate new particulars, within 14 business days of the change occurring.
- (1A) The notice of a change in the particulars relating to the close associates of the holder of a master 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.
- (2) The regulations may make provision for or with respect to the particulars that are (or are not) required to be included in a notice under subsection (1).

## **22A Master licence holder not to permit procedures by certain persons on licensed premises**

It is a condition of a master licence that the licensee must not permit an individual to perform a body art tattooing procedure at the licensed premises unless the individual is the holder of—

- (a) a tattooist licence, or
- (b) a visiting tattooist permit.

## **23 Changes in staff members**

- (1) It is a condition of a master licence that the licensee must, within 20 business days after a change in staff employment, give written notice to the Commissioner of that change.
- (2) There is a **change in staff employment** for the purposes of subsection (1) if—
  - (a) a new staff member is employed to work at the licensed premises, or
  - (b) a staff member ceases to be employed to work at the licensed premises.
- (3) The regulations may make provision for or with respect to the changes in staff employment that are (or are not) required to be included in a notice under subsection (1).

## **24 Display of licence information**

It is a condition of a master licence that the licensee must ensure that a document or information prescribed by the regulations is conspicuously displayed at the licensed premises.

## **Division 5 Suspension and cancellation of licences**

### **25 Suspension of licence**

- (1) The Commissioner may, if the Commissioner is satisfied that there may be grounds for cancelling a licence, suspend the licence by serving the licensee with a written notice—
  - (a) stating that the licence is suspended and (subject to section 20) the reasons for suspending it, and
  - (b) requesting that the person provide the Commissioner, within the period specified in the notice (being a period of not less than 14 business days from the date the notice is served), with written reasons as to why the licence should not be cancelled, and
  - (c) stating that the licence will be cancelled unless the person provides the

Commissioner with sufficient reasons as to why the licence should not be cancelled, and

- (d) stating the period during which the licence is suspended (being a period of no more than 60 days from the date on which the notice is served).

**Note—**

Section 27 of the *Crimes (Criminal Organisations Control) Act 2012* provides for the automatic suspension of a licence if an interim control order is made with respect to a licensee.

- (2) A licensee must return a licence that has been suspended to the Commissioner in the period (if any) specified by the Commissioner in the notice suspending the licence.

Maximum penalty—20 penalty units.

## **26 Cancellation of licence**

- (1) The Commissioner must cancel a licence if—

- (a) the licensee or a close associate of the licensee has failed to comply with a requirement of a notice under section 19A, or
- (b) the Commissioner is satisfied that, if the licensee were applying for a new licence, the application would be required to be refused under this Act.

**Note—**

Section 27 of the *Crimes (Criminal Organisations Control) Act 2012* provides for the automatic revocation of a licence if an interim control order made with respect to a licensee is confirmed under that Act.

- (2) The Commissioner may cancel a licence—

- (a) if the Commissioner is satisfied that the licensee has—
  - (i) supplied information which was (to the licensee's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence, or
  - (ii) contravened any provision of this Act or the regulations (whether or not the licensee has been convicted of an offence for the contravention), or
  - (iii) contravened a condition of the licence, or

- (a1) (Repealed)

- (b) in such other circumstances as may be prescribed by the regulations.

- (3) Except in the case of a licence that is cancelled on a ground specified in subsection (1)(b), the Commissioner may not cancel a licence without first—

- (a) suspending the licence, and

(b) considering any reasons provided by the licensee under section 25 as to why the licence should not be cancelled.

- (4) The Commissioner may cancel a licence by serving the licensee with a written notice stating that the licence is cancelled and (subject to section 20) the reasons for cancelling it.
- (5) The cancellation of a licence by such a notice takes effect when the notice is served or on a later date specified in the notice.
- (6) The Commissioner may, by serving a further written notice on the licensee, revoke a notice cancelling a licence before the notice takes effect.
- (7) A licensee must return a licence that has been cancelled to the Commissioner in the period specified by the Commissioner in the notice cancelling the licence if the licence has not previously been returned.

Maximum penalty (subsection (7)): 20 penalty units.

## **Division 5A Permits relating to unlicensed body art tattooing**

### **26A Visiting tattooist permits**

- (1) A permit granted under this Division (a **visiting tattooist permit**) authorises the permit holder to perform body art tattooing procedures—
  - (a) under the conditions of the permit, and
  - (b) for the period stated in the permit.
- (2) The conditions of the permit may be—
  - (a) imposed by the Commissioner, whether at the time the permit is granted or at a later time, or
  - (b) imposed by this Act, or
  - (c) prescribed by the regulations.
- (3) The regulations may prescribe the maximum period for which a permit may be granted.

### **26B Application for visiting tattooist permit**

- (1) An application for a visiting tattooist permit may only be made by an individual—
  - (a) who is at least 18 years of age, and
  - (b) who is not an Australian citizen or permanent Australian resident.

- (2) The application must—
  - (a) be made to the Commissioner in the way decided by the Commissioner, and
  - (b) include information prescribed by the regulations, and
  - (c) be accompanied by—
    - (i) documents prescribed by the regulations, and
    - (ii) the fee prescribed by the regulations, and
  - (d) comply with other requirements prescribed by the regulations.
- (3) Without limiting subsection (2), the Commissioner may prescribe that a type of information required for an application is to be information specified in a standard or guidelines prescribed by the regulations.
- (4) The Commissioner may request further information about the application, prescribed by the regulations, after the application is made.

#### **26C Decisions about application for visiting tattooist permit**

The Commissioner may decide to grant or refuse to grant an application for a visiting tattooist permit in accordance with the grounds prescribed by the regulations.

#### **26D Form of permit**

A permit must be—

- (a) in the approved form, and
- (b) include a permit number.

#### **26E Cancelling or suspending a visiting tattooist permit**

- (1) The Commissioner may decide, on the Commissioner's own initiative, to cancel or suspend a visiting tattooist permit.
- (2) Without limiting subsection (1), the Commissioner may decide to cancel or suspend a visiting tattooist permit as a result of a determination of a matter referred to in section 19.

### **Division 6 Review of decisions**

#### **27 Right to seek administrative review from Civil and Administrative Tribunal**

- (1) A person (other than a controlled member of a declared organisation) may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the following decisions—

- (a) the refusal or failure by the Commissioner to grant a licence to the person,
  - (a1) the refusal or failure by the Commissioner to renew a licence granted to the person,
  - (b) a condition imposed by the Commissioner on a licence granted to the person,
  - (c) the suspension or cancellation (other than on the ground referred to in section 26(1)(b)) of a licence granted to the person,
  - (d) the refusal or failure by the Commissioner to grant a visiting tattooist permit to the person,
  - (e) a condition imposed by the Commissioner on a visiting tattooist permit granted to the person,
  - (f) the suspension or cancellation of a visiting tattooist permit granted to the person.
- (2) For the purposes of this section, an application for the grant or renewal of a licence, or for the grant of a visiting tattooist permit, is taken to have been refused if the licence or permit is not granted, or the licence is not renewed, within 60 days after the application is made under this Act.

**Note—**

Under the *Civil and Administrative Tribunal Act 2013*, if the Tribunal has made an administrative review decision, for example, when it reviews a decision referred to in subsection (1), a party to the proceedings may appeal to an Appeal Panel of the Tribunal. An appeal on a question of law may then lie to the Supreme Court.

- (3) Subsection (4) applies in relation to an application for administrative review of a decision to—
- (a) refuse to grant, renew or restore a licence, or
  - (b) refuse to grant a permit, or
  - (c) suspend or cancel a licence or permit.
- (4) The Civil and Administrative Tribunal, in determining an application for administrative review, and an Appeal Panel of the Tribunal, in determining an internal appeal against the review under the *Civil and Administrative Tribunal Act 2013*—
- (a) must ensure that it does not, in the reasons for the decision or otherwise, disclose the existence or content of a criminal intelligence report or other criminal information without the Commissioner's approval, and
  - (b) must, to prevent the disclosure of a criminal intelligence report or other criminal information, receive evidence and hear argument in the absence of the following, unless the Commissioner otherwise approves—

- (i) the public,
- (ii) the applicant for the administrative review,
- (iii) the applicant's representative,
- (iv) any other interested party.

**Note—**

See section 20 for the Commissioner's obligations in relation to disclosure of criminal intelligence information.

- (4A) If the Tribunal considers that information contained in a criminal intelligence report or other criminal information has not been properly identified as such, the Tribunal must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by the Tribunal in its determination of an application.
- (4B) Information that is withdrawn by the Commissioner must not be—
  - (a) disclosed to any person, or
  - (b) taken into consideration by the Tribunal in determining an application.
- (5) (Repealed)

## **Part 4 Enforcement**

### **Division 1 Closure orders**

#### **28 Interim closure of unlicensed or illegal tattoo parlours**

- (1) The Commissioner may make an order that specified premises be closed (an ***interim closure order***)—
  - (a) if the Commissioner is satisfied that a body art tattooing business is being carried on at those premises without the authority of a master licence, or
  - (b) if the Commissioner reasonably suspects that any serious criminal offences are being committed at the premises.
- (2) An interim closure order must be served on the person apparently in charge of the premises (if any) or be posted in a conspicuous place at the entrance to the premises.
- (3) An interim closure order takes effect from the time it is so served or posted and has effect for a period of 72 hours, unless sooner repealed or revoked.
- (4) More than one interim closure order closing the same premises may not be made under this section in any period of 7 days.

## **29 Long term closure of tattoo parlours**

- (1) The Local Court may, on the application of the Commissioner, order that specified premises be closed for such period or until such time as the Court considers appropriate if the Court is satisfied that—
  - (a) a body art tattooing business is being carried on at those premises without the authority of a master licence, or
  - (b) there have been, or there are likely to be, serious criminal offences committed at or in connection with the premises.
- (2) An application may be made under this section regardless of whether an interim closure order is (or has been) in force with respect to the premises.
- (3) If an interim closure order is in force with respect to premises when an application is made under this section, the Local Court may revoke the order if the Court considers that the order should not have been made or that there are no longer sufficient grounds for the order to continue in force.

## **30 Body art tattooing business may not be carried on in closed premises**

- (1) A person must not, while a closure order is in force with respect to premises—
  - (a) carry on a body art tattooing business at those premises, or
  - (b) work as a body art tattooist at those premises.

Maximum penalty—

- (a) in the case of a corporation—100 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, and
  - (b) in any other case—50 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues.
- (2) It is a defence in proceedings for an offence against this section if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that a closure order was in force with respect to the premises.

## **Division 2 Powers of entry**

### **30A Powers of authorised officers to enter premises without warrant**

- (1) An authorised officer may at any reasonable time enter any licensed premises, or any other premises that the authorised officer reasonably suspects are being used to perform body art tattooing procedures for fee or reward, for the following purposes—
  - (a) for determining whether there has been compliance with, or a contravention of,



this Act or the regulations,

(b) generally for administering this Act.

- (2) This section does not confer a power to enter any premises or part of premises that are used only for residential purposes without the permission of the occupier or the authority of a search warrant.

### **30B Powers of authorised officers to enter premises with warrant**

- (1) An authorised officer may apply to an authorised warrants officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that any provision of this Act or the regulations is being or has been contravened on any premises.
- (2) An authorised warrants officer to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any authorised officer to enter and search the premises.
- (3) An authorised officer executing a search warrant issued under this section may—
- (a) enter the premises specified in the warrant, and
  - (b) search the premises for evidence of a contravention of this Act or the regulations, and
  - (c) exercise any other function of an authorised officer under this Part.
- (4) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (5) In this section—

**authorised warrants officer** means an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

### **30C Powers that may be exercised by authorised officers on entry**

- (1) Without limiting section 32, an authorised officer may, at any premises lawfully entered under this Act for a purpose referred to in section 30A (1), do any or all of the following—
- (a) examine any licence, registers, books, records or other documents on the premises,
  - (b) make a copy on the premises of any licence, registers, books, records or other documents and retain that copy,
  - (c) require any person to make a copy on the premises of any licence, registers,

books, records or other documents and give that copy to the authorised officer to retain,

- (c1) make such examinations and inquiries as the authorised officer considers necessary,
  - (d) take such photographs, films, audio, video or other recordings as the authorised officer considers necessary,
  - (e) require any person to produce any licence, registers, books, records or other documents on the premises,
  - (f) require any person to answer any question relating to any licence, registers, books, records or other documents or any other relevant matter,
  - (g) take any licence, registers, books, records or other documents from the premises for the purposes of copying them,
  - (h) seize any licence, registers, books, records or other documents, or any other thing that the authorised officer believes on reasonable grounds is connected with an offence against this Act or the regulations.
- (2) The power to seize anything connected with an offence includes a power to seize anything that will provide evidence of the commission of an offence.
- (3) Any registers, books, records or other documents taken only for the purpose of copying them must be returned when that copying is completed.

### **31 Police powers of entry with dog**

A police officer may at any reasonable time enter any licensed premises, or any other premises that the police officer reasonably suspects are being used to perform body art tattooing procedures for fee or reward, for the purpose of—

- (a) carrying out general drug detection (within the meaning of Division 2 of Part 11 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)) using a dog, or
- (b) carrying out general firearms or explosives detection (within the meaning of Part 13 of that Act) using a dog.

## **Division 2A Power to obtain information or records in relation to advertising offence**

### **31A Application of Division**

This Division applies whether or not a power of entry under this Part is being or has been exercised.

**31B Requirement to provide information and records**

- (1) An authorised officer may, by written notice given to a person, require the person to give the officer the information or records the officer requires by the notice for the purpose of determining whether a person has committed an offence under section 8A.
- (2) A notice under this section must state—
  - (a) the way the information or records are required to be given, and
  - (b) a reasonable time by which the information or records are required to be given.
- (3) The notice may only require a person to give to the officer existing records that are—
  - (a) in the person's possession, or
  - (b) within the person's power to obtain lawfully.
- (4) The authorised officer may take copies of the records.
- (5) If a record required under this section is in electronic, mechanical or other form, the record must, unless the notice otherwise provides, be given in writing.

**31C Power of authorised officers to require answers and record evidence**

- (1) If an authorised officer suspects, on reasonable grounds, that a person has knowledge of matters in relation to which information is reasonably required for the purpose referred to in section 31B, the authorised officer may require the person to answer questions about the matters.
- (2) For the purpose of answering questions under this section, the Commissioner may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation to answer the questions.
- (3) An authorised officer may, by written notice given to a person, require the person to attend at a specified place and time to answer questions under this section.
- (4) An authorised officer may record questions and answers to questions given under this section if the officer has informed the person being questioned that the record is to be made.
- (5) The record may be made using—
  - (a) sound recording apparatus, or
  - (b) audio visual apparatus, or
  - (c) another method decided by the authorised officer.
- (6) A copy of the record must be provided by the authorised officer to the person as soon

as practicable after the record is made.

(7) A record may be made under this section despite the provisions of another law.

### **Division 3 Other enforcement provisions**

#### **32 Production of licences and permits**

A licensee or the holder of a visiting tattooist permit must not, without reasonable excuse, fail to produce his or her licence or permit to an authorised officer on demand by an authorised officer.

Maximum penalty—20 penalty units.

#### **32A Identification of certain authorised officers**

- (1) An authorised officer, who is not a police officer, must be provided with an identification card as an authorised officer by the Commissioner.
- (2) An authorised officer, who is not a police officer, exercising a function under this Act must produce to a person affected by the exercise of the function the officer's identification card if requested by the person.

#### **33 Hindering or obstruction of authorised officer**

A person must not, without reasonable excuse—

- (a) obstruct, hinder or interfere with an authorised officer in the exercise of a function under this Act, or
- (b) fail to comply with any requirement made of the person by an authorised officer in the exercise of a function under this Act.

Maximum penalty—20 penalty units.

#### **33A Provisions relating to requirements to give 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, 30C, 31B or 31C to give 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, 30C, 31B or 31C to give 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 given

or answer given by an individual in compliance with a requirement under section 19A, 30C, 31B or 31C 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 giving the information or answer on the ground that it might incriminate the person.

(4) **Records admissible** Any record given by a person in compliance with a requirement under section 19A, 30C, 31B or 31C 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 given or of an answer given in compliance with a requirement under section 19A, 30C, 31B or 31C is not inadmissible on the ground—

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

#### **34 Nature of proceedings for offences**

(1) Proceedings for an offence against this Act or the regulations may be dealt with—

- (a) summarily before the Local Court, or
- (b) summarily before the Supreme Court in its summary jurisdiction.

(2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

#### **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.

### **35A Offence of altering, damaging or destroying records and other things**

- (1) A person must not, without reasonable excuse, alter, damage or destroy a document or other thing—

(a) required to be kept under this Act or the regulations, or

(b) required to be provided, produced or furnished under section 19A or 30C.

Maximum penalty—20 penalty units.

#### **Note—**

See the [Interpretation Act 1987](#), section 21, definition of **document**.

- (2) Subsection (1) extends to anything containing information required to be provided under section 19A, if the alteration, damage or destruction of the thing would prevent or limit the provision of the information.

### **35B Offence of providing false or misleading information**

A person must not provide information or do another thing in purported compliance with a requirement made under this Act or the regulations, knowing that it is false or misleading in a material respect.

Maximum penalty—20 penalty units.

### **35C Offence of conspiring to commit offence**

A person must not conspire with another person to commit an offence against section 35A or 35B.

Maximum penalty—20 penalty units.

### **35D Offence of inducing commission of offence**

A person must not induce or attempt to induce another person to commit an offence against section 35A or 35B, including by the use of threats, intimidation, promises or offers.

Maximum penalty—20 penalty units.

## Part 5 Miscellaneous

### 36 Exchange of information

- (1) The Commissioner may enter into an arrangement (***an information sharing arrangement***) with a relevant agency for the purposes of sharing or exchanging any information that is held by the Commissioner or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of the functions of the Commissioner under this Act or the regulations or of the relevant agency concerned.
- (3) Under an information sharing arrangement, the Commissioner and the relevant agency are, despite any other Act or law of the State, authorised—
  - (a) to request and receive information that is held by the other party to the arrangement, and
  - (b) to disclose that information to the other party.
- (4) In this section—

***relevant agency*** means any of the following—

  - (a) (Repealed)
  - (b) any Public Service agency within the meaning of the *Government Sector Employment Act 2013*,
  - (c) Transport for NSW,
  - (d) any local council,
  - (e) any other person or body prescribed by the regulations.

### 36A Certificate evidence

- (1) A certificate purporting to have been signed by the Commissioner and stating any of the following is admissible in evidence in any proceedings and is evidence of the matters stated—
  - (a) that on a specified day, or during a specified period, a specified person was, or was not, the holder of a licence,
  - (b) that on a specified day a licence formerly held by a specified person had been cancelled or surrendered,
  - (c) that on a specified day, or during a specified period, a licence held by a specified person was suspended,

- (d) that on a specified day, or during a specified period, a licence held by a specified person was subject to specified conditions,
- (e) that on a specified day, or during a specified period, specified premises were, or were not, licensed premises,
- (f) that on a specified day, or during a specified period, a specified person was, or was not, the holder of a permit,
- (g) that on a specified day a permit that was formerly held by a specified person had been revoked or had expired,
- (h) that on a specified day, or during a specified period, a permit held by a specified person was subject to specified conditions,
- (i) that on a specified day, or during a specified period, specified premises were, or were not, subject to an interim closure order.

(2) (Repealed)

### **37 No compensation payable for exercise of regulatory functions**

- (1) No compensation is payable to any person or body for—
  - (a) the closure of premises under this Act, or
  - (b) a refusal to grant a licence or visiting tattooist permit under this Act, or
  - (c) the suspension or cancellation of a licence or visiting tattooist permit under this Act, or
  - (d) the exercise of any other function in connection with any such closure, refusal, suspension or cancellation.
- (2) Subsection (1) extends to the purported exercise in good faith of any of the functions referred to in that subsection.

(3) In this section—

**compensation** includes damages and any other form of monetary compensation.

### **38 Delegations**

- (1) (Repealed)
- (2) The Commissioner may delegate to an authorised delegate any of the Commissioner's functions under this Act or the regulations, other than this power of delegation.
- (3) A delegate may sub-delegate to another authorised delegate any of the functions delegated by the Commissioner if the delegate is authorised in writing by the



Commissioner.

(4) In this section—

**authorised delegate** means—

- (a) a police officer or any other member of the NSW Police Force, or
- (b) a person employed in a Public Service agency within the meaning of the [Government Sector Employment Act 2013](#), or
- (c) any person (or any person belonging to a class of persons) prescribed by the regulations.

### 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.

### 40 Provision of documents to Commissioner

- (1) A document may be served on, given to or lodged with the Commissioner in a way approved by the Commissioner.

**Note—**

The ways a document may be served under this Act that are approved by the Commissioner are listed on

the NSW Police Force website.

- (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 the Commissioner in any other manner.

#### **41 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1) or any other provision of this Act concerning the making of regulations, the regulations may make provision for or with respect to the following—
  - (a) the conditions of licences or permits,
  - (b) the misuse of licences (including the forgery, alteration, theft or other improper use of licences) and misrepresentations concerning licences,
  - (c) without limiting paragraph (f), the application of, or exemption from, licensing requirements in connection with body art tattooing shows or exhibitions and the short term approval of the performing of body art tattooing procedures (including the issue of permits for those purposes),
  - (d) methods of service (which may include electronic transmission) for a notice or other document authorised or required to be served by or under a provision of this Act, either in addition to or as an alternative to a method of service provided for by the provision concerned,
  - (e) licence and permit fees,
    - (e1) the waiver, reduction, postponement or refund by the Commissioner of fees payable or paid under this Act or the regulations,
  - (f) exemptions from the operation of this Act or specified provisions of this Act,
  - (g) the making, keeping and inspection of records in connection with the carrying on of body art tattooing businesses.
- (3) A regulation may create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation or 20 penalty units in any other case.

#### **42 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) If the regulations so provide, any such provision may—
  - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Making of first principal Regulation**

Part 2 of the *Subordinate Legislation Act 1989* is taken to apply to the first regulation made under this Act as if the Minister administering that Act had given a certificate under section 6 (1) (b) of that Act with respect to the regulation.

#### **3 Making of closure orders pending the commencement of section 6**

A closure order may not be made on the ground referred to in section 28 (1) (a) or 29 (1)

(a) until section 6 (1) commences.

### **Part 3 Provisions consequent on enactment of [Tattoo Parlours Amendment Act 2012](#)**

#### **4 Existing applications and licences**

- (1) Amendments to sections 16 and 17 by the [Tattoo Parlours Amendment Act 2012](#) apply in respect of all licences, whether or not granted before the commencement of that Act.
- (2) Amendments to sections 4, 11 and 27 by the [Tattoo Parlours Amendment Act 2012](#) extend to an application for a licence that was lodged, but not finally determined, before the commencement of that Act.

#### **5 Right to review where licence not granted within 60 days**

For the purposes of section 27 (2), an application for a licence lodged before the day that is 6 months after the commencement of the [Tattoo Parlours Amendment Act 2012](#) is taken to have been lodged on that day.

### **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.

### **Part 5 Provisions consequent on enactment of [Better Regulation and Customer Service Legislation Amendment \(Bushfire Relief\) Act 2020](#)**

#### **7 Definitions**

In this Part—

**amendment Act** means the [Better Regulation and Customer Service Legislation Amendment \(Bushfire Relief\) Act 2020](#).

**relevant period** means the period—

- (a) starting on 18 July 2019, and
- (b) ending immediately before the commencement of the amendment Act.

#### **8 Waiver, reduction, postponement or refund of fees before commencement**

- (1) This clause applies if, during the relevant period, the Secretary waived, reduced, postponed or refunded, in whole or part, a fee payable or paid by a person under this Act or the regulations on the ground the Secretary was satisfied it was appropriate because—
  - (a) the person was suffering financial hardship, or
  - (b) special circumstances existed.
- (2) The waiver, reduction, postponement or refund is taken to have been as valid as if it had happened after the commencement of the amendment Act.

#### **9 Power to waive, reduce, postpone or refund fees applies to events before commencement**

To remove any doubt, the power of the Secretary to waive, reduce, postpone or refund, in whole or part, a fee payable or paid under this Act or the regulations applies in relation to—

- (a) a person who was suffering financial hardship—
  - (i) during the relevant period, or
  - (ii) because of events that happened during the relevant period, or
- (b) special circumstances—
  - (i) that existed during the relevant period, or
  - (ii) that exist because of events that happened during the relevant period.

### **Part 6 Provisions consequent on enactment of [Tattoo Parlours Amendment \(Statutory Review\) Act 2022](#)**

#### **10 Definition**

In this Part—

**amending Act** means the [Tattoo Parlours Amendment \(Statutory Review\) Act 2022](#).

#### **11 References to [Tattoo Parlours Act 2012](#)**

A reference in an Act, statutory instrument or other instrument to the [Tattoo Parlours Act 2012](#) or a provision of that Act is to be read as a reference to this Act, or a provision of this Act.

## **12 Licence applications taken to have been made to Commissioner**

- (1) An application for a licence made, but not finally dealt with by the Secretary before the commencement of the amending Act, Schedule 1[18], is taken to have been made to the Commissioner.
- (2) In this clause—  
**application**, for a licence, includes an application for the renewal or restoration of a licence.

## **13 Applications for operator licences**

- (1) This section applies to a person who—
  - (a) has made an application for an operator licence, or renewal or restoration of an operator licence, that was not finally determined before the commencement, or
  - (b) for an operator licence that expired before the commencement—makes an application for restoration of the licence in the time set out in section 13B(1).
- (2) The person is taken to have made an application for a master licence.
- (3) In this clause—  
**commencement** means the commencement of the amending Act, Schedule 1[14].

## **14 Operator licences taken to be master licences**

A person who is the holder of an operator licence that is in force immediately before the commencement of the amending Act, Schedule 1[14] is taken to hold a master licence.

## **15 References to former licensees**

A reference to a former licensee under a master licence is taken to include a reference to a person who, before the commencement of the amending Act, Schedule 1[14], was a former licensee under an operator licence.

## **16 References to operator licences**

A reference in an Act, statutory instrument or other instrument to an operator licence granted under this Act is taken to be a reference to a master licence granted under this Act.

## **17 Existing applications and licences**

- (1) The amendments to sections 14, 16 and 19 made by the amending Act—
  - (a) apply for all licences, whether granted before or after the commencement, and
  - (b) extend to an application for a licence or for the renewal or restoration of a licence

that was made, but not finally determined, before the commencement, and

(c) for a licence that expired before the commencement—extend to an application for restoration of the licence made during the period set out in section 13B(1).

(2) Despite the operation of subclause (1), the Commissioner must not, under section 25 or 26 as amended by the amending Act, suspend or cancel a licence held by an existing licensee on the ground that the existing licensee has been convicted of a disqualifying offence.

(3) In this clause—

**commencement** means the commencement of the amending Act, Schedule 1[18].

**existing licensee** means a person who held a licence before the commencement that—

(a) was in force immediately before the commencement, and

(b) has not expired, or been renewed or restored under this Act, after the commencement.

## 18 Appeals and reviews

(1) An appeal made, or review commenced, in relation to a licence or an application for a licence that has not been determined before the commencement, must be determined in accordance with the Act, as in force after the commencement.

(2) In this clause—

**commencement** means the commencement of the amending Act, Schedule 1[18].

## 19 Document transferred

A document, kept by the Secretary for the Secretary's licensing function under this Act, is to be transferred to the control of the Commissioner for the purposes of this Act.

## Schedule 2 (Repealed)