



Regulatory Impact Statement

Tattoo Parlours Regulation 2013

June 2023

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1 INTRODUCTION

1.1 Why the Regulation is being remade

The Tattoo Parlours Regulation 2013 sets out the administrative and legislative detail required to support the *Tattoo Parlours Act 2012* (the Act). This includes how to apply for permits to participate in tattooing shows, requirements relating to applications for tattoo licences, licence conditions, record-keeping, and fees payable for licensing administration.

The *Subordinate Legislation Act 1989* provides for regulations to have a limited life. The existing Regulation will automatically repeal on 1 September 2023. When a regulation is due for repeal, the responsible agency must review the regulation and its social and economic impacts to determine if it is still necessary. The regulation can then be remade, postponed or allowed to lapse.

The NSW Police Force (NSWPF) has reviewed the existing Regulation, and this Regulatory Impact Statement (RIS) outlines the cost-effective benefits of remaking the Regulation with amendments (the proposed Regulation).

1.2 Matters outside the scope of this consultation

Legislative amendments that have already been made to the *Tattoo Parlours Act 2012* and Tattoo Parlours Regulation 2013 but have not yet come into force are **not** the subject of this consultation process.

Of relevance, the *Tattoo Parlours Amendment (Statutory Review) Act 2022* passed the NSW Parliament on 29 March 2022. It implements changes to the NSW tattoo legislative framework to address matters arising from the [Statutory Review of the Tattoo Parlours Act 2012 \(July 2020\)](#). However, the legislative amendments are not active until a date for commencement is specified. This often occurs when there needs to be sufficient time for agencies to undertake implementation activities to support the new provisions.

This means that the changes do not yet appear in the current *Tattoo Parlours Act 2012* and Tattoo Parlours Regulation 2013. For your awareness, The *Tattoo Parlours Amendment (Statutory Review) Act 2022* made six key changes to the *Tattoo Parlours Act 2012* and Tattoo Parlours Regulation 2013, by:

1. Changing the name of the legislative instruments from 'Tattoo Parlours' to 'Tattoo Industry'. This is to modernise the language of the Act and reflect the professionalism of the industry.
2. Providing for the NSWPF to be the sole administrator for all functions under the scheme, rather than joint regulation between the NSWPF and NSW Fair Trading

(Department of Customer Service). This is to make government and interactions easier for the public and industry as they only need to engage with one authority.

3. Providing that being a member of a prescribed criminal organisation be a mandatory ground for refusal of a licence or permit application and prescribing those organisations in the existing Regulation.
4. Prohibiting advertising of body art tattooing businesses or procedures without an appropriate licence. This is to prevent 'backyard tattooing', which undermines the legitimate industry professionals and poses a risk to the public.
5. Providing for prescribed disqualifying offences for the Commissioner to refuse a licence or permit. This will ensure applicants know from the outset what types of criminal history are grounds for refusal for an application.
6. Establishing a limited duration permit scheme for visiting overseas body art tattooists to perform body art tattooing procedures, unrelated to attendance at a tattoo show or other industry event. This will support the industry to benefit from hosting international talent at their businesses to improve local expertise and their customer experience.

Similarly, new offences that were introduced into the *Tattoo Parlours Act 2012* under section 35A to 35D by the *Security Industry Amendment Act 2022* are not the subject of this consultation process.

The *Security Industry Amendment Act 2022* passed the NSW Parliament and is set to commence on 1 June 2023. This RIS will only address whether these new offences should be prescribed as penalty notice offences.

2 CONSULTATION PROGRAM

2.1 Public consultation

The proposed Regulation and this RIS are publicly available on the 'Have Your Say' page of the NSW Government website at <https://www.nsw.gov.au/have-your-say>. They will be available for at least 21 days.

The NSWPF has published a notice about the release of the proposed Regulation and RIS in the NSW Government Gazette, the Daily Telegraph and the Sydney Morning Herald. Copies have been sent directly to the stakeholders listed at Appendix 1.

2.2 How to make a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation.

Submissions can be provided using the online form, by email or mail.

Email: legpol@police.nsw.gov.au
Mail: Legislation and Policy Branch
NSW Police Force
Locked Bag 5102
PARRAMATTA NSW 2124

The closing date for submissions is **Friday 30 June 2023**.

There is no set format for submissions, however short comments that refer to the part or section of the proposed Regulation are encouraged.

2.3 Confidential submissions

Any requests to treat the submission on a confidential basis will be considered, subject to the *Government Information (Public Access) Act 2009*. Submissions will also be provided to the Legislation Review Committee of NSW Parliament in accordance with section 5 of the *Subordinate Legislation Act 1989*.

2.4 Evaluation of submissions

The NSWPF will consider each submission and if necessary, amend the proposed Regulation to address issues raised in the consultation process. If we need more information, we may reach out to relevant stakeholders before finalising the new Regulation.

2.5 Commencement of the new Regulation

Once finalised, the NSWPF will submit the proposed Regulation to the Governor for approval. The final Regulation will then be published on the notifications page of the official NSW legislation website at www.legislation.nsw.gov.au on the Friday immediately following the relevant Executive Council meeting.

It is intended that the new Regulation and the *Tattoo Parlours Amendment (Statutory Review) Act 2022* will commence together on 1 September 2023, when the existing Regulation repeals.

3 OBJECTIVES OF THE REGULATION

The purpose of the legislation is to provide legislative support and administrative detail for the operation of the Act. Without the Regulation, the Act cannot be as effectively enforced or administered.

The objectives of the Act as discussed in the second reading speech for the introduction of the Bill in 2012 are as follows, to:

- Remove outlaw motorcycle gangs and their affiliates from the tattoo industry
- Prevent tattoo parlours from being used to launder proceeds of crime
- Ensure that only fit and proper persons are granted and able to hold a licence
- Establish the regulation for certain types of body art tattooing only
- Identify all persons with a relevant interest in a body art tattooing business
- Enhance the enforcement capability of police to help keep illicit activity such as drugs and firearms out of a tattoo business.

The provisions within the Regulation are directly related to these overall objectives of the Act. For example, the Regulation prescribes:

- Provisions exempting certain tattooing shows from licensing requirements
- Provisions for applications to the Commissioner for a permit to conduct tattoo shows
- The circumstances for the Commissioner to consider when making decisions on permit applications in relation to tattoo shows, thereby preventing the entry of unsuitable applicants into the industry
- The special conditions applicable to licences generally and master licences, which provide assurance to the public on the legitimacy of individual tattooing businesses
- The information licence holders must record and how it must be provided to authorised officers
- The penalty notice offences and associated penalty fines so that offences do not always need to be prosecuted in court
- The fee information for licences and permits.

The tattoo industry regulation laws are subject to ongoing monitoring and review to make sure they remain fit for purpose.

4 EVALUATION OF OPTIONS

4.1 Summary and preferred option

To best achieve the objectives of the Act, the following options have been considered:

Option 1: Do nothing and allow the existing Regulation to lapse

Option 2: Remake the existing Regulation without change

Option 3: Remake the existing Regulation with amendments

These options have been assessed with consideration given to:

- the overall benefits provided by each option
- the relative costs associated with each option
- the ability to effectively support the tattoo industry and related consumer protection measures of the Act
- the capacity for reducing the regulatory burden.

Option 3 is the recommended option. Remaking the Regulation with amendments will provide the current benefits of the existing Regulation as well as additional benefits from amendments this RIS proposes. Most of the proposed amendments are administrative changes designed specifically to reduce the regulatory burden on industry participants and streamline the regime with similar industry frameworks also regulated by the NSWPF.

This option will ensure applicants know from the outset what types of criminal history are grounds for refusal for an application. The *Tattoo Parlours Amendment (Statutory Review) Act 2022* introduces a new provision that enables licence and permit applications or renewals to be refused if a person was convicted of a disqualifying offence in the 10 years previous. As the Regulation is responsible for prescribing each disqualifying offence, this RIS will explore the offences that should be included.

Option 2 is not supported. Remaking the Regulation without amendment will not impose new costs on the industry or consumers, but it will not bring significant benefits. Out of date provisions and unnecessary regulatory requirements would continue to be in force.

Option 1 is not supported. Allowing the current Regulation to lapse under the option of doing nothing would reduce the effectiveness of the Act and make parts inoperable. This option fails to meet the regulatory objectives and would create a higher financial and intangible cost to consumers and the wider community. It may even lead to a net loss for business when the limitations provided by the existing Regulation ends. It would not be possible to give effect to the intention of the Act without further action, such as amending the Act.

Table 1: Summary of costs and benefits of each option

Option		Costs	Benefits	Overall benefit
1	Take no action	High	Low	Negative
2	Maintain the status quo	Medium	Medium	Neutral
3	Make the proposed Regulation	Low	High	Positive

4.2 Option 1: Do nothing and allow the existing Regulation to lapse

Allowing the existing Regulation to lapse would cease operation of all current provisions in the Regulation including the permit scheme for tattoo events, provisions around record keeping and special provisions for individual licence classes.

The costs of not remaking the existing Regulation are significant and include:

- reducing the overall effectiveness of the Act with some parts becoming inoperable, which may lead to increasing criminality within this industry as observed prior to introduction of the Act
- removing exemptions from the requirement to be licenced under the Act for certain tattoo shows, which may dampen economic and recreational benefits currently provided
- ending the requirements to keep business records and creating enforcement difficulties when ensuring legitimacy of tattooing practice
- loss of mechanisms to prohibit misuse of licences, including altering or destruction of licences
- a licensee not being obligated to report lost, stolen or damaged licences, hindering customers from being certain of the legitimacy of their chosen tattoo artist
- the Commissioner not having discretion to replace a licence, causing licensees to suffer any resulting disadvantage, loss of income or livelihood, or penalties
- offences only able to be prosecuted in court as the penalty notice system would cease to operate
- negating the fee system, which would affect ability to get or renew a licence
- decreasing revenue from regulatory services, thereby reducing ability for the regulator to maintain service provisions necessary to administer the Act.

The existing legislative regime has proven successful in reducing gang and organised criminal activity in the tattoo industry. In the 2010/2011 financial year, the NSWPF recorded 136 offences committed within a tattoo business. This dropped to 27 offences for the next two financial years combined, following the introduction of the *Tattoo Parlours Act* in 2012 and Regulation in 2013. This is a key indicator the scheme is operating as intended to thwart organised crime infiltration into this industry. The current regime is required at a minimum to preserve these gains.

For these reasons, the **Option 1 is not supported.**

4.3 Option 2: Remake the existing Regulation without change

Remaking the existing Regulation without change would maintain all the current provisions. The existing Regulation would be remade with no changes, meaning that outdated and unclear clauses would continue to be in force.

This option would not reduce regulatory burden. There may be some administration cost savings for business as the industry is already familiar with these requirements and would not require any action to update practices or systems. These savings are likely to be low and would not offset ongoing costs of inefficient provisions.

Although the Regulation in its current form supports the Act and protects consumers, it does not provide the added benefits and reduced regulatory burden of the proposed Regulation such as:

- new licence and permit disqualifying offences
- reductions on notification requirements to the regulator
- removal of requirements for visiting tattooist permit holders at tattoo shows to carry their passport.

If the existing Regulation is remade without change, the mandatory disqualifying offences would not be prescribed. This would frustrate the intentions of the *Tattoo Parlours Amendment (Statutory Review) Act 2022*, which is to ensure that a licence or permit application can be rejected if a person has been convicted of certain offences within the past 10 years. The purpose of this is to allow an applicant to assess upfront whether they would be eligible to apply for a licence or permit, rather than awaiting the outcome of a lengthy probity assessment.

For these reasons, **Option 2 is not supported.**

4.4 Option 3: Remake the existing Regulation with amendments

Remaking the existing Regulation with amendments would maintain benefits provided by the current regulatory regime while including improvements to simplify processes for industry participants and the regulator.

This will firstly be achieved by prescribing a schedule of disqualifying offences, as intended by the *Tattoo Parlours Amendment (Statutory Review) Act 2022*.

The introduction of mandatory disqualifying offences arose from concerns raised by tattoo industry participants about licence applicants not always understanding why their application had been refused. Specifying the disqualifying offences will make it clear to prospective applicants from the outset whether they will be automatically unsuitable for a licence without having to go through a probity check.

This schedule of disqualifying offences is required to give proper effect to the requirement in the *Tattoo Parlours Amendment (Statutory Review) Act 2022* to refuse a licence if the applicant has been convicted of a prescribed offence in the past 10 years.

Retaining and improving the existing framework will continue to ensure that organised criminals are not able to infiltrate the tattoo and body art industry, and police have the powers necessary to ensure the tattoo and body art industry is appropriately and effectively regulated.

The proposed Regulation will also incorporate the following additional changes:

- removing the burdensome requirement for international tattoo artists to carry their passport, given that the *Tattoo Parlours Amendment (Statutory Review) Act 2022* has included citizenship requirements in the licence application process
- clarifying confusing timeframes for licensees to return a licence to the Commissioner for premises under long term closure; and to notify the Commissioner of a lost, stolen or destroyed operator (master) licence. This will be achieved by extending the timeframes from '7 business days' to '10 days'
- removing the redundant requirement for a licensee to notify the Commissioner of a prescribed licence cancellation circumstance. This is because the NSWPF will become the sole regulator for the Act and will already have access to this information
- expanding the ability for refusal of licence of a 'controlled member of a declared organisation' to a 'member of prescribed criminal organisation' to enable consistent application of the Act

- removing the Commissioner's power to waive, reduce, postpone or refund fees to ensure consistency with the other NSWPF regulated industries
- removing interim provisions that no longer apply and were designed to protect the industry from liability for offences while their applications were being processed when the Act commenced
- prescribing new offences as penalty notice offences to enable a person the choice to deal with the matter through a fine rather than through court.

There are very low administrative and regulatory costs to effect the changes, but they would provide significant benefits.

For these reasons, **Option 3 is the recommended option.**

5 THE PROPOSED REGULATION

The objective of the proposed Regulation is two-fold:

- to provide regulatory provisions to support the *Tattoo Parlours Amendment (Statutory Review) Act 2022*
- to reduce the regulatory requirements on industry participants and provide greater clarity around administrative processes in effect.

As stated earlier in this document, the *Tattoo Parlours Amendment (Statutory Review) Act 2022* is not the subject of this consultation as it has already been enacted by the NSW Parliament on 29 March 2022.

A key change by the *Tattoo Parlours Amendment (Statutory Review) Act 2022* for industry members to bear in mind when considering the proposed Regulation, is that the tattoo regime will be regulated solely by the NSWPF rather than continuing shared administrative responsibility between the NSWPF and NSW Fair Trading. This means that authority held by the Secretary throughout the existing Regulation will transfer to the Commissioner of the NSWPF.

The changes in the proposed Regulation are outlined in the sections below.

5.1 Excluding members of prescribed criminal organisations from applying or being granted a licence or permit – Clauses 3 and 7

Currently, a controlled member of a ‘declared organisation’ cannot apply for, or be granted, a licence or permit. This prohibition was introduced to curb infiltration into the industry by organised crime groups (including outlaw motorcycle gangs). The Supreme Court is responsible for declaring these organisations but has not made such a declaration to date.

The *Tattoo Parlours Amendment (Statutory Review) Act 2022* extends the prohibition to members of a ‘prescribed criminal organisation’, so that the Commissioner can undertake relevant enquiries and prevent the granting, renewing, or restoring of a licence if a person is a member of a prescribed criminal organisation (or was a member in the 12 months prior to the application). The *Tattoo Parlours Amendment (Statutory Review) Act 2022* provides a list of currently prescribed criminal organisations.

The proposed Regulation extends the prohibition on members of prescribed criminal organisations to applying for permits for a tattoo show or being an authorised participant at a tattoo show (and able to carry out body art tattooing at the show). Under the existing Regulation, a person is not able to apply for a permit or be an authorised participant in a

tattoo show if they are an 'unsuitable individual'. An 'unsuitable individual' is defined as someone under 18 years of age or a controlled member of a declared organisation.

The proposed Regulation extends the definition of 'unsuitable individual' in section 5 to include a member of a prescribed criminal organisation, and someone who was a member of a prescribed criminal organisation in the 12 months before making the application. This will ensure that a person will not be able to apply for a permit to conduct a tattoo show and will not qualify as an authorised participant of a show if they are or were recently a member of a prescribed criminal organisation.

Similarly, the proposed Regulation in section 11(4)(b) specifies that the Commissioner must not grant a permit to an 'unsuitable individual', in accordance with the expanded definition detailed above and found in section 5 of the proposed Regulation.

This proposal provides consistency between the licence and permit investigation and refusal provisions in the *Tattoo Parlours Amendment (Statutory Review) Act 2022* with those in the Regulation.

- 1. Are there other circumstances within the Regulation that should exclude a member of a prescribed criminal organisation that does not already do so? If so, please detail.**

5.2 Removing the requirement for international tattoo artists to carry their passport – Clause 4

A new requirement under the *Tattoo Parlours Amendment (Statutory Review) Act 2022* will take effect, which requires a person to provide a copy of their passport as part of a visiting tattooist permit application. This will ensure a person applying is of international citizenship, as an application for a visiting tattooist permit can only be made by a person who is over 18 years and not an Australian citizen or a permanent Australian resident.

The proposed Regulation will remove the dual requirement for a visiting tattoo artist performing body art tattooing procedures as an authorised participant at a show to carry their passport and produce it upon request by an authorised officer. This provision is considered unnecessary as citizenship documentation evidence will form part of the application process for visiting tattooist permits.

It is considered an inconvenient burden for a visiting tattoo artist to carry their passport while performing body art procedures at premises (shows). The proposed Regulation removes this requirement while still maintaining the intent, which is to ensure only persons who are international citizens are eligible for a visiting tattooist permit.

- 2. Does removing the requirement for a visiting international tattoo artists to carry their passport at tattooing shows impact other industry process in place? If so, please detail.**

5.3 Changing industry notification requirements from '7 business days' to '10 days' – Clauses 15 and 16

The proposed Regulation replaces references to '7 business days' with '10 days' for the provisions that require:

- a licensee to surrender to the Commissioner an operator licence for a premises under long-term closure – clause 15 (proposed Regulation section 25)
- a licensee to notify the Commissioner of a lost, stolen or destroyed operator licence – clause 16 (proposed Regulation section 26).

The purpose of this change is to establish a consistent timeframe that alleviates the need for manual calculations by the licensee and regulator where weekends and/or public holidays are encountered. It is understood the current timeframes may cause confusion between industry members and the regulator that could result in unintentional non-compliance. To ensure licensees are not hindered by a reduced time frame to act, the total number of days has been increased to 10 days.

The change from 'business days' to 'days' will provide consistency with similar requirements in the security industry framework and will support automated date calculations within the technical system used by the NSWPF to manage administration activities.

- 3. Does replacing references to '7 business days' with '10 days' pose any difficulty for licensees? If so, please detail.**

5.4 Removing the notification requirement for licence cancellation circumstances – Clause 17

The proposed Regulation removes clause 17, which requires a licensee to notify the Commissioner if they become aware of a circumstance that would result in an operator licence being cancelled under section 26 of the Act. This includes, for example, instances such as the licensee being advised of a negative security outcome for an application or failing to collect a new or renewed licence from the nominated place within 60 days of being notified it is available.

With the NSWPF becoming the sole regulator, they are satisfied they have the necessary visibility of licence cancellation circumstances in the absence of being informed by the

licensee. It is understood this provision was originally necessary when NSW Fair Trading was performing licence administration functions separate to the NSWPF, who were undertaking the probity component of application processing.

- 4. Are you aware of any reason why the requirement to notify the Commissioner of a licence cancellation circumstance would need to remain in place? If so, please detail.**

5.5 Removing the Commissioner's power to waive, reduce, postpone or refund fees – Clauses 26A and 26B

Clause 26A in the existing Regulation gives the Secretary discretionary power to waive, reduce, postpone or refund fees. Clause 26B sets out the circumstances where a person can apply for a partial refund of fees for certain licences.

These provisions were originally introduced by the *Better Regulation and Customer Service Legislation Amendment (Bushfire Relief) Act 2020* and applicable to 14 schemes administered by Service NSW.

With the NSWPF becoming the sole regulator for the tattoo regime, the proposed Regulation removes clauses 26A and 26B to promote consistency with other regimes administered by the NSWPF, including the security, firearms and scrap metal industries.

- 5. Would the removal of these provisions deter a member of the industry from applying for a tattoo licence? If so, please detail.**

5.6 Removing redundant provisions for licencing offences – Clause 29

Prior to 2012, the tattoo industry in NSW was unregulated. Therefore, tattooist and tattoo businesses were able to operate without a licence.

In 2012, a regulatory framework for the NSW tattoo industry was established through the *Tattoo Parlours Act 2012* which instituted requirements for all tattoo businesses and tattooists to apply for a licence to continue to operate lawfully. Offences for contravention of this requirement were also prescribed.

Of note, a transitional provision was implemented to ensure that individuals who were transitioning over to the licence regime were able to continue operating as normal without the fear of committing offences for being unlicensed. The transitional provision exempted an applicant from liability for unlicensed offences while waiting to learn the outcome of their application.

As this provision was an interim measure necessary for the time when the regulatory regime first commenced, it can be omitted from the proposed Regulation as it has no further utility.

5.7 New penalty notice offences – Schedule 2

The *Tattoo Parlours Act 2012* includes a variety of offences, most of which are prescribed in the Tattoo Parlours Regulation 2013 as penalty notice offences. The NSWPF have reviewed all offences under the Act and existing Regulation and propose to prescribe additional offences as penalty notice offences (see Table 2 below) where it would be appropriate to do so.

The proposed offences for inclusion were inserted into the Act by the *Security Industry Amendment Act 2022* and have not yet been prescribed as penalty notice offences. A further two offences under the existing Regulation, not previously prescribed as a penalty notice offence, are also proposed for inclusion as penalty notice offences.

Listing an offence as a penalty notice offence means that any non-compliance resulting in an offence can be dealt with by an authorised officer through a penalty notice, i.e., a fine which contains the details of the offending and a monetary fee. The practical benefit of this is that non-compliance can be resolved in a timely fashion and does not necessarily need to go through the judicial system, which could potentially result in a conviction.

However, it should be noted that if a person is issued a penalty notice, a person always has the option to elect to have the matter determined by a Court as outlined under Division 2 Penalty notices of the [Fines Act 1996](#). The proposed penalty notice amount is \$550, or \$1,100 relating to a corporation (as indicated), consistent with other penalty offence amounts in the existing Regulation.

Table 2 – New penalty notice offences

Offences under the <i>Tattoo Parlours Act 2012</i>		
Section	Offence	Penalty
35A(1)	Offence of altering, damaging or destroying records and other things.	\$550
35B	Offence of providing false or misleading information.	\$550
Offences under the <i>Tattoo Parlours Regulation 2013</i>		
34(c)	Deface, damage, alter or destroy a licence without the permission of the Commissioner.	\$550
34(d)	Have another person's licence in the person's possession without a reasonable excuse.	\$550

Offences inserted by the *Security Industry Amendment Act 2022*

On 13 October 2022, the *Security Industry Amendment Act 2022* passed the NSW Parliament and is set to commence on 1 June 2023. This Act strengthens and modernises the security licensing regime and provides greater deterrents to stop criminal activity.

Notably, it inserts four new offences into the *Security Industry Act 1997* and four comparable offences into the *Tattoo Parlours Act 2012* for consistency with enforcing high-risk regulated industries, being the offences under sections 35A to 35D.

Each of these offences has a maximum penalty of 20 penalty units under the *Security Industry Amendment Act 2022*. The offences under sections 35A and 35B of the *Tattoo Parlours Act 2012* are proposed to be included as a penalty notice offence, however the offences under section 35C (offence of conspiring to commit offence) and section 35D (offence of inducing commission of offence) are not suitable to be penalty notice offences.

Offences under the existing Regulation

Clauses 25(a) to 25(d) of the existing Regulation, being sections 34(a) to 34(d) of the proposed Regulation, detail offences that relate to the misuse of licences. These offences have not previously been prescribed as penalty notice offences within the existing Regulation. The NSWPF propose to include the offences for deface, damage, alter or destroy a licence without the permission of the Commissioner (under section 34(c)) and the offence for having another person's licence in the person's possession without a reasonable excuse (under section 34(d)) as penalty notice offences.

Both these offences are appropriate as penalty notice offences (with maximum penalty of 40 penalty units for a corporation and 20 units otherwise) and including them provides consistency across all offences under the Act and Regulation.

6. Are these penalty notice offences and the penalty amount fair and effective, noting that a person can still elect to have their matter heard by the Court? If not, please detail.

5.8 Disqualifying offences for licences and permits – Schedule 4

The *Tattoo Parlours Amendment (Statutory Review) Act 2022* provides that the Commissioner must refuse a licence if the applicant is convicted of a prescribed offence in the 10 years before the application was made and includes regulation making power to schedule these offences. This can be applied to all licence and permit types.

As discussed in the Statutory Review, some licence applicants have waited a long time to receive a decision on their application. This has largely been due to the complex processes the NSWPF must undertake in cases where an unfavourable security determination has

been made. This delay can negatively impact an applicant's ability to make long term decisions about their business or future in the industry.

The inclusion of a schedule of disqualifying offences within the Regulation will provide applicants with realistic expectations by indicating up-front what type of criminal history is considered grounds for refusal. It also facilitates consistency with the decision-making process by the regulator and gives clear guidance to adjudicators on the legislative intent.

Table 3 details the disqualifying offences included in the proposed Regulation. The rationale for the inclusion of each disqualifying offence is discussed below the table. Each disqualifying offence has been considered in the context of the type of risks within the tattoo industry, and the intention of the Act to exclude criminal groups and their affiliates from operating within the industry.

It is noted the introduction of disqualifying offences brings the NSW tattoo industry regime in line with tattooing regulatory schemes in [Queensland](#) and [South Australia](#), as well as other licensing regimes administered by the NSWPF, such as the security licensing and firearms regimes.

Ensuring a level of consistency with interstate regimes would support mutual licence recognition capacity, noting that visiting tattooist permits only apply to overseas tattoo artists rather than interstate counterparts.

Table 3 – Proposed disqualifying offences

Offences	Defined as
Relating to firearms or weapons	An offence relating to the possession, use or supply of a firearm or another weapon, or a firearm part or ammunition that disqualifies the person from holding a licence under the Firearms Act 1996 .
Relating to prohibited drugs	An offence— <ul style="list-style-type: none"> a) relating to— <ul style="list-style-type: none"> (i) a psychoactive substance, prohibited plant or prohibited plant within the meaning of the Drugs Misuse and Trafficking Act 1985, or (ii) a prescribed restricted substance within the meaning of the Poisons and Therapeutic Goods Regulation 2008, and b) for which the penalty imposed included— <ul style="list-style-type: none"> (i) a term of imprisonment, whether or not suspended, or (ii) a community service work condition, or (iii) a penalty of \$500 or more.
Involving serious violence	An offence involving serious violence, punishable by imprisonment for life or for a term of 10 years or more, if the conduct constituting the offence involves— <ul style="list-style-type: none"> a) the loss of or a serious risk to a person's life, or

	<ul style="list-style-type: none"> b) serious injury or a serious risk of serious injury to a person, or c) serious damage to property in circumstances endangering the safety of a person.
Involving organised criminal groups, consorting and recruitment	An offence under the Crimes Act 1900 , section 93T, 93X or 351A.
Involving money laundering	An offence under the Crimes Act 1900 , Part 4AC.
Of a sexual nature	<p>An offence—</p> <ul style="list-style-type: none"> a) of a sexual nature under— <ul style="list-style-type: none"> (i) the Crimes Act 1900, Part 3, Division 10, 10A, 10B, 14A, 15, or 15A, or (ii) the Summary Offences Act 1988, section 11G, or b) that is an offence of attempting to commit, threaten to commit or conspiring to commit an offence referred to in paragraph (a).
Relating to tattooing of children and young persons	An offence under the Children and Young Persons (Care and Protection) Act 1998 , section 230 or 230A.
Relating to riot	An offence under the Crimes Act 1900 , section 93B.
Involving stalking or intimidation	Any offence involving stalking or intimidation.
Involving kidnapping or abduction	Any offence involving kidnapping or abduction.
Involving robbery	Any offence involving robbery, whether armed or otherwise.
Involving fraud	An offence involving fraud for which the penalty imposed included a term of imprisonment, whether or not suspended, for 3 months or more.
Relating to terrorism	An offence relating to terrorism, being an offence under the Crimes Act 1900 , Part 6B, or against the Criminal Code, Part 5.3, set out in the Schedule to the Criminal Code Act 1995 of the Commonwealth.
Relating to blackmail	An offence under the Crimes Act 1900 , Part 4B, relating to blackmail.

The offence categories above include any offence under the law of another Australian jurisdiction, or the law of an overseas jurisdiction, that is substantially the same as, or the equivalent of, an offence specified in Schedule 4 of the proposed Regulation. This provision is outlined in section 4 (for permits) and section 19 (for licences) of the proposed Regulation.

Offences relating to firearms or weapons

An offence relating to the possession, use or supply of a firearm or another weapon, or a firearm part or ammunition that disqualifies the person from holding a licence under the *Firearms Act 1996*.

A person in unlawful possession of a firearm or weapon may have criminal affiliations and/or engage in criminal group activities. This has the potential to enable infiltration of criminal groups into the industry, and even more detrimentally, the ability to endanger the safety of customers and respectable industry members. Both Queensland and South Australia prescribe firearms and other weapons related offences in their tattoo regimes, including offences for possession and trafficking.

Offences relating to prohibited drugs

An offence—

a) relating to—

- (i) a psychoactive substance, prohibited plant or prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
- (ii) prescribed restricted substance within the meaning of the Poisons and Therapeutic Goods Regulation 2008, and

b) for which the penalty imposed included—

- (i) a term of imprisonment, whether or not suspended, or
- (ii) a community service work condition, or
- (iii) a penalty of \$500 or more.

Prescribing prohibited drug offences in this manner is designed to target criminal groups operating a commercial drug model, rather than minor drug offence convictions for individuals, which could unfairly restrict the industry. For this reason, the offences have been limited according to the 'penalty' imposed by the Court. That provides a clear indication of the severity of the offending. The 'penalty imposed' thresholds will ensure that individuals are not disqualified for low level offending.

Both Queensland and South Australia prescribe offences relating to dangerous and/or prohibited drugs in their tattoo regimes, however South Australia excludes possession of a controlled drug, precursor, or plant as a disqualifying offence.

Offences involving serious violence

An offence involving serious violence, punishable by imprisonment for life or for a term of 10 years or more, if the conduct constituting the offence involves—

- a) the loss of or a serious risk to a person's life, or
- b) serious injury or a serious risk of serious injury to a person, or
- c) serious damage to property in circumstances endangering the safety of a person.

This category of serious violence offences will capture offences such as murder, grievous bodily harm, attempts to murder, and arson; as well as including attempts, threats, or conspiracy to commit one of these offences. The South Australia tattoo regime adopts a

broader scope of offences by citing ‘an indictable offence involving violence’ regardless of the maximum penalty for the offence. The Queensland tattoo regime, however, has specified each offence by reference to ‘prescribed offence’ within the meaning of section 161N of the *Penalties and Sentences Act 1992 (Qld)*. The approach to the serious violence offences definition taken here for the proposed Regulation would reduce need to continually review and amend individual prescribed offence types.

Offences involving organised criminal groups, consorting and recruitment

An offence under the *Crimes Act 1900*, section 93T, 93X or 351A

Prescribing organised crime, consorting and recruitment offences is crucial to minimising criminal groups and their affiliates from being able to participate in the tattoo industry, especially given this industry’s history of criminal infiltration by outlaw motorcycle gangs. The relevant offences under the *Crimes Act 1900* are section 93T (participation in criminal groups), section 93X (consorting), and section 351A (recruiting persons to engage in criminal activity).

These offences are similarly prescribed in the security industry and firearms regimes as disqualifying offences. Both Queensland and South Australia prescribe participation in a criminal group and consorting as a disqualifying offence for the purposes of their tattoo industry acts. The South Australian tattoo regime extends the scope to apply to a person who commits an offence punishable by life imprisonment for the benefit of, or in connection with, a criminal organisation.

Money laundering

An offence under the *Crimes Act 1900*, Part 4AC

Money laundering is a proposed disqualifying offence recommended by the Statutory Review, but not incorporated in other NSW regulatory regimes as a disqualifying offence. Due to known links of organised criminal groups funnelling illegal proceeds of crime through a tattoo business to make it appear legitimate, money laundering has been prescribed in the proposed Regulation. It is similarly included by Queensland as a disqualifying offence under their Tattoo Industry Act.

Offences of a sexual nature

An offence—

a) of a sexual nature under—

- (i) the *Crimes Act 1900*, Part 3, Division 10, 10A, 10B, 14A, 15 or 15A, or
- (ii) the *Summary Offences Act 1988*, section 11G, or

- b) that is an offence of attempting to commit, threaten to commit or conspiring to commit an offence referred to in paragraph (a).

Multiple industry submissions into the Statutory Review proposed the inclusion of sexual assault and rape offences within the Regulation. Prescribing this category in the proposed Regulation is appropriate, also noting the nature of tattooing services and necessity for significant touching when performing body art procedures. A tattooist with a history of sexual offending poses a risk to customers. Additional prescribing further offences such as an offence under Division 14A (procuring for prostitution), 15 (child prostitution) or 15A (child abuse material) of Part 3 of the *Crimes Act 1900* would minimise risk to young people and assist with curbing criminal groups involved in activities such as procuring for prostitution or trafficking.

Queensland prescribes a range of sexual offences as a disqualifying offence including rape, sexual assaults, procuring sexual acts by coercion, grooming children under-age, making and distributing child exploitation material, and procuring young persons for carnal knowledge. South Australia, however, does not prescribe any sexual offences as a disqualifying offence.

Offences relating to tattooing and body piercing of children and young persons

An offence under the *Children and Young Persons (Care and Protection) Act 1998*, section 230 or 230A.

The *Children and Young Persons (Care and Protection) Act 1998* prohibits the tattooing of a child or young person's body unless the tattooist has obtained the written consent of a parent. There are also prohibitions (regardless of whether parent has consented) on performing body piercing on certain parts of a child's body. As such, it would be logical to refuse issuing a licence or permit for applicants convicted of these offences due to the risks it may pose for young people and children seeking to get tattooed with consent.

Offences relating to riot

An offence under the *Crimes Act 1900*, section 93B.

Riot is defined under the *Crimes Act 1900* as where 12 or more people present together to use or threaten to use unlawful violence, as would cause fear to a reasonable person, and can result in being liable to imprisonment for 15 years if found guilty. Due to this serious nature, the Statutory Review recommends including riot offences, which are also prescribed in the NSW security and firearms regimes.

Queensland prescribes riot as a disqualifying offence in their tattoo regime however South Australia does not prescribe any equivalent offences.

Offences involving stalking or intimidation

An offence involving stalking or intimidation.

Stalking and intimidation are disqualifying offences prescribed within the security industry and firearms regimes that the NSWPF regulate¹. Queensland similarly prescribes unlawful stalking as a disqualifying offence in their tattoo regime.

Offences involving kidnapping or abduction

An offence involving kidnapping or abduction.

A person who takes or detains a person without their consent, as a basic offence, is liable for imprisonment for 14 years. If the kidnapping offence is considered aggravated, that increases to 20 years. Due to the serious and potentially violent nature of kidnapping offences, the Statutory Review has recommended inclusion as a prescribed disqualifying offence in the proposed Regulation. The Queensland tattoo regime similarly prescribes kidnapping as a disqualifying offence.

Offences involving robbery

An offence involving robbery, whether armed or otherwise.

Given that the definition of robbery in the *Crimes Act 1900* is quite broad, there is the potential to limit the scope of robbery related offences to robbery with wounding and/or with arms to exclude instances of lower-level stealing. The Queensland tattoo regime prescribes robbery, attempted robbery, and burglary (where a person breaks and enters and commits an indictable offence in the dwelling). South Australia does not appear to have an equivalent disqualifying offence in their tattoo regime.

Offences involving fraud, dishonesty or stealing

An offence involving fraud for which the penalty imposed included a term of imprisonment, whether or not suspended, for 3 months or more.

Fraud is an act on behalf of a person that is deceptive or deceitful in some way, in that it causes them to receive a benefit that they are not entitled to. Like money laundering, fraud is prescribed as a disqualifying offence due to the likelihood that a person who has been convicted of fraud and is seeking to participate in the tattoo industry may have criminal group affiliations. To exclude minor fraud offences, the definition applies to fraud convictions where the penalty imposed was three months or more imprisonment. The Queensland tattoo

¹ Stalking is a high predictor for domestic and family violence related deaths.

regime prescribes fraud as a disqualifying offence if it is committed in circumstances where the offender is liable to imprisonment for 14 or more years. Note this approach refers to the maximum penalty available rather than the penalty imposed.

Offences relating to terrorism

An offence relating to terrorism, being an offence under the *Crimes Act 1900*, Part 6B, or against the Criminal Code, Part 5.3, set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

There is a relationship between organised crime groups and the provision of financing and/or logistical support for terrorism related activities. To ensure the tattoo industry remains free from organised criminal activity, it is necessary to exclude individuals with convictions for terrorism related offences within the last 10 years. Terrorism offences are considered disqualifying offences under the regulations for both the NSW security industry and firearms regime.

Offences relating to blackmail

An offence under the *Crimes Act 1900*, Part 4B, relating to blackmail.

A blackmail offence is where a person makes an unwarranted demand with menaces, with the intention of obtaining gain or causing loss, or with the intention of influencing the exercise of public duty. Blackmail is prescribed as disqualifying offences in the proposed Regulation to target the business behaviours of criminal groups, including outlaw motorcycle gangs - noting that blackmail holds a maximum penalty of 10 years imprisonment.

7. Are there offences or categories of offences that should be included and have not been? If so, please detail.

8. Are there offences or categories of offences that should be revised or removed? If so, please detail.

9. Does defining the disqualifying offences in this way help applicants to know whether their previous history would result in refusal of an application? If not, please detail.

Consideration of disqualifying offences for certain types of licences or permits

The Act provides for a variety of different kinds of licences and permits. These are:

- A master licence (formerly operator licence)
- A tattooist licence
- A tattooing show permit
- A visiting tattooist permit.

There may be potential for the disqualifying offences prescribed to pose a different level of risk depending on the type of licence or permit being applied for.

For example, previous convictions for money laundering and fraud may only be of concern where the applicant owns the business. On the other hand, there could be circumstances where a tattooist licensee (i.e., an individual tattooist) is also employed to manage the finances and accounts within a tattoo business.

Similarly, it may be unreasonable to disqualify someone from being granted a tattooist licence due to a convicted drug offence for example, but appropriate to disqualify someone from being granted a master licence for the same conviction.

10. Should certain disqualifying offences or categories of offences only apply to set licence or permit types (i.e., master licence, tattooist licence, a tattooing show permit or visiting tattooist permit)? If so, please detail.

Other issues not raised in this RIS

The regulation making power is set out under section 41 of the Act. There may be additional considerations that could be prescribed in the Regulation that are not currently. Alternately, there could be powers used currently that require review.

11. Are there issues not addressed in this RIS that relate to the existing Regulation? If so, what is the issue and how could it be addressed in the proposed Regulation?

Appendix 1 – List of targeted stakeholders

A copy of the proposed Regulation and this RIS has been provided to the following tattoo industry stakeholders:

- Professional Tattooing Association of Australia Inc
- Australian Tattooists Guild
- NSW tattoo industry licence holders

Appendix 2 – Summary of the proposed Regulation

The following table sets out the main changes in the proposed Regulation compared to the current Regulation, as described in the corresponding RIS section:

Section	Current Regulation	Proposed Regulation
5.1	Defines an unsuitable individual to be someone under 18 years of age, or a controlled member of a declared organisation [clause 3].	Updates the definition to include a member of a prescribed criminal organisation, or someone who was a member of a prescribed criminal organisation in the past 12 months (for consistency with the Act) [section 5].
5.1	Places the condition that the Secretary (Commissioner) must not grant a permit to a controlled member of a declared organisation [clause 7].	Updates the condition to include a member of a prescribed criminal organisation, or someone who was a member of a prescribed criminal organisation in the past 12 months (for consistency with the Act) [section 11].
5.2	Places the condition that a visiting tattoo artist must carry their passport when performing body art tattooing at a tattooing show [clause 4(d)(i)].	Removes this condition, which is viewed as unnecessary. New section 15(1)(a) requiring a copy of the applicant's passport for a visiting tattooist permit application will capture the overseas citizenship requirements up front, as intended by the Act.
5.3	Places the condition that where a closure order has been made for a licenced premises, the operator (master) licensee must return the licence to the Secretary (Commissioner) within 7 business days [clause 15].	Updates the time frame to specify '10 days', for a licensee to return a licence to the Commissioner where a closure order has been made with respect to a licenced premises [section 25].
5.3	Places the condition that where an operator (master) licence has been lost, stolen or destroyed, the licensee must notify the Secretary within 7 business days of awareness [clause 16].	Updates the time frame to specify '10 days' for a master licensee to notify the Commissioner where a master licence has been lost, stolen or destroyed [section 26].
5.4	Places the condition that an operator (master) licensee must notify the Secretary (Commissioner) of any circumstance occurring that would result in the licence being cancelled under section 26 (2) (b) of the Act [clause 17].	Omits the requirement for a master licensee to notify the Commissioner if they are aware of a circumstance that would result in their master licence being cancelled.
5.5	Provides the ability for the Secretary (Commissioner) to waive, reduce, postpone or refund fees (either in whole or part) for a person suffering financial hardship or where specific circumstances exist [clause 26A].	Takes away the discretionary power of the Commissioner regarding fees payable under the Act or Regulation, to align with the other NSWPF regulated regimes.

5.5	Provides the ability for the Secretary (Commissioner) to partially refund application fees for certain licences [clause 26B].	Takes away the discretionary power of the Commissioner regarding partial refund of licences fees, to align with the other NSWPF regulated regimes.
5.6	A transitional provision that excludes a person from being liable for unlicensed offences during the time they were waiting to learn the outcome of their licence application [clause 29].	Omits this provision as all parts of the Act have commenced and there are no outstanding applications from this time.
5.7	Details offences under the Act and Regulation that can be dealt with by issuing a penalty notice. This means a person can elect to pay the fine and not be further liable, rather than having the matter heard in Court [Schedule 2].	Updates the schedule to include four more penalty notice offences - two are for new offences under the Act and two are for existing offences under the Regulation [schedule 2].
5.8	No current schedule.	Details the offences that would make a person ineligible to apply for a licence or permit; and includes that the Commissioner must refuse a licence for a person convicted of any of these offences in the past 10 years [schedule 4].

Appendix 3 – List of questions from the RIS

Questions	Page
1. Are there other circumstances within the Regulation that should exclude a member of a prescribed criminal organisation that does not already do so? If so, please detail.	15
2. Does removing the requirement for a visiting international tattoo artists to carry their passport at tattooing shows impact other industry processes in place? If so, please detail.	16
3. Does replacing references to '7 business days' with '10 days' pose any difficulty to licensees? If so, please detail.	16
4. Are you aware of any reason why the requirement to notify the Commissioner of a licence cancellation circumstance would need to remain in place? If so, please detail.	17
5. Would the removal of these provisions deter a member of the industry from applying for a tattoo licence? If so, please detail.	17
6. Are these penalty notice offences and the penalty amount fair and effective, noting that a person can still elect to have their matter heard by the Court? If not, please detail.	19
7. Are there offences or categories of offences that should be included and have not been? If so, please detail.	26
8. Are there offences or categories of offences that should be revised or removed? If so, please detail.	26
9. Does defining the disqualifying offences in this way help applicants to know whether their previous history would result in refusal of an application? If not, please detail.	26
10. Should certain disqualifying offences or categories of offences only apply to specific licence or permit types (i.e., master licence, tattooist licence, a tattooing show permit or visiting tattooist permit)? If so, please detail.	27
11. Are there issues not addressed in this RIS that relate to the existing Regulation? If so, what is the issue and how could it be addressed in the proposed Regulation?	27