



ATG response to VLRC Consultation Paper

In response to VLRC consultation paper, our organisation remains mindful that the use of regulatory tools to prevent the infiltration of organized crime may indeed affect the pursuit of other regulatory purposes and objects, and may jeopardise the overall effectiveness of future schemes.

It is perceived that the findings of this report offer our industry an opportunity to discuss prevention of criminal infiltration in the context of developing solid regulatory regimes.

As a result, we have chosen to direct our responses to the use of regulatory tools not only from a perspective of allowing agencies to prevent infiltration of crime, but also to ensure suitable regulatory responses are developed specifically for the tattoo industry. Such responses would ensure positive outcomes were achieved across the broader industry through the implementation of these tools.

Our organisation, in consultation with the broader industry, now looks to develop a framework for suitable policy that can be presented to Government in the near future.

During the drafting of this framework we shall look at other mechanisms and jurisdictions in an attempt to identify a system of regulation that ensures positive outcomes for industry are achieved.

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

- possesses the requisite artistic skill
- possesses the requisite technical knowledge
- possesses the requisite experience
- is duly qualified; and
- possesses the requisite Occupational Health and Safety certifications

Any framework being specifically developed for the tattoo industry will look to the following purpose and object:

- to promote professional standards, growth, integrity and sustainability within the industry
- to reduce risk to the general public
- to eliminate/minimize infiltration of organised crime
- to eliminate risks associated with amateur operators



Suitable regulatory responses developed specifically for the tattoo industry have an opportunity to not only remove criminal elements, but also address the many issues industry currently faces.

The key element of any regulatory regime that seeks to proactively support industry whilst addressing the manner in which criminal input and activity exists will regulate the entry of people into industry through the development of a strong framework. This will ensure entrants qualify for licensure through suitable entry pathways that necessitate formal recognition of both qualification and education.

Positive Licensing

Positive licensing schemes have a strong emphasis on scrutinizing prospective entrants and creating license preconditions. Whilst this structure appears to be capable of implementing the regulatory tools identified by industry to deal with the current issues, caution should also be exercised when recommending this type of regime due to experiences with the implementation of such schemes in other states.

(see - attachment ATG Submission)

Identifying a suitable regulator

In looking to identify a regulating agency to administer future schemes, it is thought that a traditional regulator such as the Business Licensing authority would be best suited to balance the competing policy priorities industry presents. If involvement from police agencies were deemed necessary, it is perceived that the sharing of regulatory roles through a traditional regulator would provide better outcomes than administration from police agencies alone.

Response/ Feedback to draft Model

To identify the purposes of organized crime in industry today, our organisation must look to the social evolution of tattooing in Australia from an historical perspective and identify our industry's roots.

This perspective provides insight and understanding into both the Government's and the broader community's perception that criminal organisations may continue to exist within the tattoo industry today. The tattoo industry was formerly dominated by OMGs with criminal conduct being perceived as ingrained within its operation.

Due to a lack of industry regulation in the past, the practice of concealing and or laundering the proceeds of crime, and the obfuscation of criminal conduct potentially persist to an extent today. This trend has however greatly diminished



due to the recent increase in individuals with a genuine interest in practicing and promoting tattooing as an art form.

Whilst acknowledging that the tattoo industry has at some point become synonymous with criminality due to infiltration in the past, it needs emphasising that this conduct no longer exists to the same degree as it historically has done. Thus agencies need to be mindful of this when developing policies/regimes that exist solely to identify individuals as being associated to criminal organisations.

Response to Consultation Questions

Q.1

In looking to add any information to the existing table 1 we suggest that infiltration exists for the purpose of allowing members of organized crime groups access to the art form through tattooists being employed by clubs.

This long held tradition of clubs training and employing the services of tattooists is well recognised. It should also be noted however that tattooists employed in such situations have often had no affiliation with clubs, nor intentionally profited from the criminal conduct said clubs may have been involved in.

This tradition is also perceived to be in decline as tattooists look to employment in studios where owners/operators have a sincere and vested interest in the art form itself.

Q.2

Identifying elements within industry that are conducive to organised crime activity through the development of a model (SCP theory) would undoubtedly prove to be beneficial for agencies who are tasked with creating frameworks for regulatory tools.

Of particular use to industry is the ability of agencies to develop regulatory responses to the legal environment that creates opportunities for crime rather than the criminal environment.

Q.3

Whilst looking to contribute changes or additions to the Commissions draft model we ask that the issues highlighted in our previous comments be noted.

In the formation of any model relating directly to industry, it may also be helpful to provide data collected by agencies currently responsible for the handling of applications and issuing of licenses in licensed states (NSW/QLD) to the



Commission. The availability of this data may facilitate a better understanding of the effectiveness of these current regimes based on the perception and context of such models.

Feedback on Draft Model

The ability of a SPC approach to identify elements within the business process, as well as the characteristics of the market in which industry is situated, particularly in relation to barriers of entry, is perceived to be of benefit. Identifying these characteristics would also be beneficial in the development of suitable regulatory responses to industry's needs.

Q.4

The following tools are suggested as being useful in addressing the risks as identified in the draft model

- Positive licensing schemes
- Registration Schemes
- Rules relating to the effective control of a business
- Rules relating to who may be employed in a business
- Rules relating to re-entry

Q.5

(a,b,c)

In looking to identify a regulating agency to structure and administer regulatory tools, it is thought that a traditional regulator such as the Business Licensing authority would be best suited to balance the competing policy priorities industry presents. Involvement from local council, education sectors and health departments is also perceived as being necessary.

If involvement from police agencies were deemed necessary, it is perceived that the sharing of regulatory roles through a traditional regulator would provide better outcomes than administration from police agencies alone.

The disadvantage of sole regulation by Victoria Police being its perceived inability to administer/ balance complex policy.

Further, NSW and QLD licensing models suggest that the police are conflicted in their objectivity –i.e. administering the law and investigating criminal behavior vs. regulating an industry perceived to be involved in the very criminality they are investigating.



Segregation needs to exist in order to maintain the fairness and integrity of industry compared to similar industries that are not regulated by the police.

Q.6

If regulatory tools are employed that place sole emphasis on the identification of individuals in order to ascertain criminal status, the industry's broader issues remain neglected.

Introduction of a simple regulatory tool such as positive licensing will introduce barriers to entry for organised crime. This does however need to be done in the context of regulating industry, not demonizing its constituents.

Responsible regulation would endeavor to protect and promote the integrity of industry.

(see supporting doc – ATG Submission)

Q.7, 8

In looking to prevent the infiltration of organised crime groups into lawful industry, it would be useful to regulate entry by requiring would be entrants to obtain a license.

The benefits of a responsible licensing regime include the identification and exclusion of criminals/criminal organisations.

The cost to industry of licensing occurs when regulatory tools are focused on this identification alone.

(c –f) being perceived as beneficial.

Q.9

Group-based license exclusion rules are perceived as being potentially harmful due to the employment of non-affiliated tattooists being employed/freelancing directly with OMGs.

It is understood however that under a group based exclusion rule, if an artist has a license and consults to a club for tattoo work there should not be an issue, it would be no different from a club member entering an independent, non-affiliated studio to get tattoo work completed.

It is noted however that this type of affiliation may not pass a licensing regime once it has been developed.



Q.10

In theory, monitoring of industry may prove effective in discouraging existing and future entry into industry. However, in practice little seems to have been achieved in states that have implemented inspection based models through licensing regimes.

Inspection based models may hold merit for health reasons.

Inspection based models currently in use (NSW, QLD) that allow police agencies access and seizure of client details/ records are perceived to be a questionable breach of an individual's civil rights.

(see accompaniment submission CLA)

In the event of industry continuing to be unregulated, monitoring regimes are not perceived to offer any type of impact to agency abilities to effectively deter organised crime.

Q.11

- a. The formation of a strong regulatory framework, which ensures entrants possess/obtain the necessary qualification for entry, would negate the need for short license duration and ongoing monitoring. A short time period between license renewal places unnecessary burden on industry participants and agencies alike.
- b. Neither complaint based models nor an inspection-based model appear to offer practical outcomes to police agencies when dealing with the infiltration of crime in industry.

In theory both may be effective. Due however to our organisation not being privy to any data that reflects the effectiveness of monitoring from police agencies in licensed states it is difficult to ascertain its usefulness.

(see ATG Submission)

- c. Investigative powers of a regulator to conduct investigations into industry are perceived to be beneficial in detecting and deterring infiltration of organized crime, particularly as regulators have the ability to exercise said powers according to regulatory priorities (having a comprehensive understanding of industry)
- d. Prohibiting practices such as the use of coercion, physical force and undue harassment are in theory beneficial. We do however concur strongly that enforcement may be difficult.



- e. Record keeping obligations currently exist for the tattoo industry through state Health legislation. With potential revision required. Access to these records would be demined under investigative powers. Further record keeping obligations on industry would create undue burden.
- f. Disclosure obligations that place onus on license holders to report events to regulators thus reducing regulatory burdens are perceived to be of benefit to both agencies and industry. Caution must however be taken in the correct identification of entrants to ensure this structures effectiveness.

Q.12

Detection of unauthorized participants such as amateur operators as well as organized crime groups would best be facilitated through regulators being provided with extensive investigative powers.

The empowerment of a police officer or authorized person to require a license holder to produce license document for inspection as well as requiring a license holder to produce license for inspection by customers is perceived to be of benefit as is empowering courts to declare premises to be “proscribed premises” if it is satisfied premises are being or have been used for the conduct of unlicensed activities.

Q.13

Enforcement measures for non-compliant conduct with any regulatory regime being implemented for the tattoo industry must be inclusive of practice standards as outlined in licensing/ regulatory regimes. Both individual licenses holders and facility operators must be held accountable for non – compliant conduct. Whilst administrative monetary penalties may be appropriate for breeches of standards it is perceived that license suspension and cancellation may be more effective when dealing with criminal conduct. All industry participants being subject to such enforcement measures having the rights of review available to them. Due to the nature of the work preformed by tattooists and the potential to cause harm through non-professional practice, any individual operating without required authorisation should be imposed with criminal sanctions and or ancillary orders, including strike rules and escalating penalties.

Q.14

Regulating the exit from industry does not appear to be applicable to the tattoo industry as licensing is personal and non transferable.

Q.15

Problems definitely exist in the sharing of information between agencies in other jurisdictions (*see attachment ATG Submission*). The creation of a single, open source



database for regulators, where information on each licensee, license types, conditions etc. is held and is subject to restrictions is perceived to offer a suitable alternative to traditional interagency relations, as well as reducing burden on individual agencies and industry.

Q.16

Regimes in other states that have made use of tests for entry such as “fit and proper persons” have seen numbers of individuals who had previously been employed professionally in the tattoo industry refused entry.

It is perceived that there is a fault in this type of rule being applied when used to determine an individual’s competency to hold a license within the tattoo industry as focus is placed on an individual’s previous criminal conduct or criminal history rather than their ability or skill in which to perform the work.

This also applies for applicants who have been denied entry due to perceived connections with organized criminals after having been employed in a facility owned or operated by an Organized Crime Group (OCG) in the past.

Many individuals who trained in the tattoo industry over the last decade may have spent time in social environments that were conducive to various types of criminal conduct. This being due in part to the environment from which the tattoo industry has evolved.

Whilst it is recognized that individuals whom have been convicted of sexually based crimes and overtly violent crimes are not desirable for entry, regulators must be mindful of the path the tattoo industry has taken in getting to today.

Focus needs to be on the individual meeting and maintaining prescribed requirements to hold a license.

Regimes that focus heavily on identification of individuals for entry and in particular regimes that are administered by more than one agency place a perceived unnecessary burden on agencies through requirements that could be better met through the development of strong frameworks. Burdens on regulators, courts and/or tribunals could be decreased or eliminated by ensuring licensing regimes are tailored to industry needs.

Q.17

In looking to identify other legal responses that may potentially aid in the prevention of infiltration of organized crime groups into lawful industry our organisation remains cautious in recommending orders that have the potential to create barriers to employment for people who are subject to orders such as anti-association laws.



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In respect to Anti-Money Laundering laws, there may be some perceived benefit to making business operation and professional facilitators less attractive to organized crime groups.

On behalf of the entire Professional Tattooing community, the ATG would like to thank the Victorian Law Reform Commission for allowing us to contribute to this important report.



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