

Our ref: Crim:PWrg1338320

29 May 2017

The Hon. Mark Speakman SC MP
Attorney General
GPO Box 5341
Sydney NSW 2001

Dear Attorney General,

Tattoo Parlours Amendment Act 2017

I write to you on behalf of the Law Society of NSW in relation to the *Tattoo Parlours Amendment Act 2017* (the Act).

As you will be aware, the Act received assent on 9 May 2017, and commences on proclamation. We note with concern that the Law Society was not consulted on the legislation prior to it being introduced.

The Law Society has serious concerns with the Act. While the legislation is limited to those involved in tattoo parlours, it gives police extraordinary powers which bypass the safeguards applying to the Crime Commission and ordinary police investigations. The Law Society has concerns about the precedent value of the provisions, particularly given that these significant powers, originally conceived for use in counter-terrorism laws, have been incorporated into ordinary areas of criminal law enforcement and business regulation.

The Act extends the existing regulatory scheme for the licensing of tattoo parlours from a fit and proper person test for the operator, to the same test for both the operator and his or her close associates (ss 19(1)(a1), 19(2)(a1)). The Act then extends the powers available to investigate whether these people are fit and proper persons.

Firstly, the principal Act allows an investigator to enter premises without a warrant (s 30A). The Act expands this power, not simply to investigate a contravention of the Act, but to "make such examinations and inquiries as the authorised officer considers necessary" (s 30C(1)(c)).

This arbitrary power appears to breach Article 17 of the International Covenant on Civil and Political Rights ("ICCPR") which protects against arbitrary interference with privacy or correspondence.

Secondly, the Act abrogates the privilege against self-incrimination. Under the existing legislation the Commissioner of Police may require the operator to provide further information and inquiries can be made during the execution of a warrant. It is an offence to fail to comply, obstruct or hinder. The new Act extends the obligation to answer to close

associates. The Act provides a limited safeguard in that if a person objects then the answer cannot be used against them (s 33A(3)). However, the provision specifically states that records are not protected (s 33A(4)). The Act further states in relation to derivative use, that further information obtained as a result of information given over objection is not inadmissible against the person (s 33A(5)).

This abrogation appears to breach Article 14(3)(g) of the ICCPR which protects against being required to "confess guilt". Chief Justice Bathurst warned against such provisions in an opening of law term speech on 4 February 2016.¹

The Law Society is opposed to the extraordinary powers contained in the Act, and we are of the view that the Act should not be proclaimed.

We also note, and support, the recent recommendation of the Acting NSW Ombudsman, that the *Crimes (Criminal Organisations Control) Act 2012* be repealed.² This legislation criminalises a person's associations and interactions rather than their conduct. The Law Society has always been of the view that this legislation is unnecessary as the NSW Police Force already has wide powers to fight organised crime, and that a concentrated effort to enforce the existing law is a more effective response to the problem of gangs.

The contact person for this matter is Ms Rachel Geare, Senior Policy Lawyer, who can be contacted on 9926 0310 or at rachel.geare@lawsociety.com.au.

Yours sincerely,



Michael Tidball
Chief Executive Officer

Cc The Hon Troy Grant MP, Minister for Police

¹ The Hon. T F Bathurst AC, Chief Justice of NSW, Opening of law term address: "The Nature of the Profession; The State of the Law", paras 48-50, http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2016%20Speeches/Bathurst%20CJ/Bathurst_20160204_speech.pdf

² NSW Ombudsman, Review of police use of powers under the *Crimes (Criminal Organisations Control) Act 2012*, November 2016, p3.