

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**RADIATION PROTECTION (TANNING UNITS) AMENDMENT  
REGULATION 2010 (No 1)**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
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# RADIATION PROTECTION (TANNING UNITS) AMENDMENT REGULATION 2010 (No 1)

## EXPLANATORY STATEMENT

### OUTLINE

The *Radiation Protection Act 2006* and supporting Radiation Protection Regulation 2007 regulate the use of ionising radiation in the Territory. The Radiation Protection legislation was also constructed to allow for the future regulation of non-ionising radiation.

The approach taken in the Radiation Protection legislation is based on the National Directory for Radiation Protection (the National Directory) published by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The Directory was developed by the National Radiation Health Committee (the Committee), which was established under the auspices of ARPANSA with representatives from the States and Territories. The establishment of the Committee was in response to the recommendations of a national competition policy review of the radiation protection legislation across Australian jurisdictions. The Directory is a statement of a nationally agreed approach to regulating the use of radiation in Australia.

Australia has among the highest skin cancer rates in the world, and its associated health and financial costs are substantial. This led to concerted efforts to better educate the Australian public about the problem of skin cancer. This has resulted in a significant increase in the level of awareness in recent decades. For this reason, important facts and information about skin cancer are so widely known and accepted in Australia that the need to act to reduce the incidence of skin cancers is indisputable.

Exposure to ultraviolet radiation is known to be the single major risk factor in relation to skin cancer, and the vast majority of this exposure is still derived from direct exposure to sunlight. Furthermore, it is also well known that exposure to ultraviolet light during adolescence is strongly associated with later development of melanoma.

It is now also well accepted that a significant level of increased risk of melanoma arises from the use of tanning units. As a consequence, it can be expected that adolescents using tanning units are placing themselves at a very high risk of developing melanoma.

Nevertheless, despite these well known truths about skin cancer, and the ever growing evidence about the hazards that are tanning units, the use of tanning units by the Australian population had actually been increasing. The reasons for the increased use of tanning units are not entirely clear. However, there have been concerns that consumers were potentially being misled or deceived into believing that the use of tanning units is safe, or could even have health benefits. There has even been a successful action in the Federal Court concerning misleading and deceptive claims of this nature by solariums.

Ultraviolet light is a form of non-ionising radiation, and tanning units therefore a source of non-ionising radiation. As such, amendments have been proposed to the National Directory that would set nationally agreed regulatory standards relating to the use of solariums.

At the time that Executive approval of this Regulation was received the proposed amendments to the National Directory had not yet been approved by all States and Territories. Nevertheless, the ACT Government is convinced of the need to regulate solarium and the associated use of tanning units. Accordingly, the provisions contained in this Regulation have been modelled on the proposed amendments to the National Directory.

## **APPLICATION OF STRICT LIABILITY**

This Regulation contains strict liability offences. Strict liability is usually employed where it is necessary to ensure the integrity of a regulatory scheme, such as those relating to public health and safety, the environment and the protection of the revenue. The control of non-ionising radiation sources requires offences that are generally at the lower end of the range of criminal conduct. These offences are contained in Division 4.4.

Professionals that deal with regulated radiation sources, be it ionising or non-ionising, can reasonably be expected to be aware of their duties and obligations. As such, strict liability offences are more readily justified when a defendant can reasonably be expected, because of his or her professional involvement, to be aware of the requirements of the law. A defendant's frame of mind for some regulatory offences is irrelevant, unless some knowledge or intention ought to be required to commit a particular offence. The mistake of fact defence expressly applies to strict liability as do other defences in part 2.3 of the *Criminal Code 2002*.

Penalties for strict liability offences should not exceed more than 50 penalty units or include a term of imprisonment. The offences in Division 4.4 have a maximum penalty of 10 penalty units. This is the highest penalty level that section 122(3) of *Radiation Protection Act 2006* permits to be included in the Regulation.

## **DETAILS**

A detailed explanation of each clause of the Regulation follows.

### **CLAUSE 1 Name of regulation**

This specifies that the name of the regulation is the Radiation Protection (Tanning Units) Amendment Regulation 2010 (No 1). The Regulation amends the Radiation Protection Regulation 2007, which is subordinate law to the *Radiation Protection Act 2006*.

### **Clause 2 Commencement**

This provision of the Regulation sets out the commencement of the Regulation.

Due to the operation of section 75(1) of the *Legislation Act 2001* the naming and commencement provisions of this Regulation, clauses 1 and 2, commence automatically on the day the Regulation is notified. A note to that effect is included in the provision.

All other provisions of this Regulation will commence on a date fixed by the Minister by written notice. Again, notes are included in the provision to alert the reader to the application of the *Legislation Act 2001*. Section 77(1) of the *Legislation Act 2001* allows for a single date or time to be fixed for commencement, or different dates and times may be fixed for different provisions of the Regulation. This enables the Minister to stagger commencement of certain provisions. This may be necessary where some provisions need to start soon, or even immediately, but it is desirable for other provisions to commence later, possibly to allow affected persons or businesses time to prepare for the operation of the Regulation.

However, if a provision has not commenced within six months of the date the Regulation is notified, section 79 of the *Legislation Act 2001* will operate to make the Regulation commence on the first day after that period.

An exception is specifically provided in regard to clause 9 of this Regulation. For clause 9, the operation of section 79 of the *Legislation Act 2001* is expressly displaced. Accordingly, clause 9 will instead automatically commence one year after the Regulation is notified, unless an earlier date is fixed by the Minister by written notice.

### **Clause 3      Legislation amended**

This provision alerts the reader that this Regulation amends the Radiation Protection Regulation 2007. Upon commencement this Regulation will alter the Radiation Protection Regulation 2007 in accordance with the provisions that this Regulation contains. This Regulation will then be immediately repealed. Consequentially, from the date that this Regulation commences a new republication of the Radiation Protection Regulation 2007 will be available. That new republication will feature the alterations made by this Regulation.

### **Clause 4      New section 4A**

This clause establishes that other legislation applies to offences against the Radiation Protection Regulation 2007. This includes, but is not limited to, the *Criminal Code 2002* and section 133 of the *Legislation Act 2001*, which deals with the meaning of offence penalties that are expressed in penalty units.

### **Clause 5      Section 7**

What constitutes a regulated radiation source is the subject of section 10(2) of the *Radiation Protection Act 2006*. Through section 10(2)(a), a radiation source that emits or is capable of emitting ionising radiation above a level prescribed in the Radiation Protection Regulation 2007 is a regulated radiation source. Furthermore, under section 10(2)(b) of the *Radiation Protection Act 2006*, radiation sources that emit or are capable of emitting non-ionising radiation are also regulated, if they are prescribed in the Radiation Protection Regulation 2007.

Prior to this amendment, section 7 of the Regulation simply instructed that a radiation source is a regulated radiation source if it emits, or is capable of emitting, ionising radiation above the exemption levels contained in the National Directory. The National Directory contains an extensive list of radionuclide, with corresponding exempt activity concentrations and exempt activity levels. No radiation sources for the purposes of section 10(2)(b) had yet been prescribed.

The effect of this provision is to replace the existing section 7 with a new version that contains two subsections; one addressing ionising radiation and the other addressing non-ionising radiation.

For the purposes of section 10(2)(a) of the *Radiation Protection Act 2006* section 7(1) provides that the exemption level for a radiation source under the National Directory is prescribed. The term *National Directory* is defined in the dictionary of the *Radiation Protection Act 2006* as meaning the National Directory for Radiation Protection, as in force from time to time, as published by the Australian Radiation and Nuclear Protection Agency.

Accordingly, a radiation source that emits or is capable of emitting ionising radiation above the exemption levels set out in the National Directory will be regulated by the *Radiation Protection Act 2006*.

Section 10(2)(b) instructs that a tanning unit used for cosmetic purposes in a solarium is prescribed as a radiation source that emits or is capable of emitting non-ionising radiation, and as such is regulated by the *Radiation Protection Act 2006*.

It is important to note that only tanning units used for cosmetic purposes in a solarium will be regulated. If a person possesses a tanning unit for their own home use, the provisions being inserted into the Protection Regulation 2007 by this Regulation will not apply. Similarly, there are tanning units that are used for legitimate medical purposes which will not be affected by this Regulation.

#### **Clause 6      Part 4**

The effect of this provision is to renumber the existing Part 4 of the Radiation Protection Regulation 2007 as Part 10. Part 4 contains miscellaneous matters which would ordinarily be located at the end of a Regulation. By renumbering Part 4 as Part 10, allowances are made for the Radiation Protection Regulation 2007 to expand with the addition of new parts, whilst still retaining miscellaneous matters at the end of the Regulation. As further regulation of radiation sources is expected in the next few years, particularly in regard to non-ionising radiation, making miscellaneous matters Part 10 allows for a number of new parts to be inserted in the future.

The purpose of this amendment is to provide for the regulation of the use and operation of tanning units. The provisions that achieve that purpose will become Part 4 by virtue of the operation of clause 8 of this Regulation.

#### **Clause 7      Sections 10, 11, and 12**

Renumbering the current Part 4 of the Radiation Protection Regulation 2007 to be Part 10 to allow for future expansion of the Regulation would be pointless unless the sections within that part were also renumbered. Accordingly, this provision renumbers existing sections 10, 11 and 12 to be sections 100, 101 and 102, respectively. Other than the sections being renumbered, no other changes are made to the provisions.

Changing sections 10, 11 and 12 to sections 100, 101 and 102 allows for sections in any new parts inserted in the future to be numbered sequentially in a purely numeric fashion.

#### **Clause 8      New part 4**

This provision inserts into the Radiation Protection Regulation 2007 a new Part 4. It is this new part that contains the provisions that are specific to the regulation of tanning units and solaria.

Part 4 is divided into four Divisions. The first Division specifies the sources and facilities to which Part 4 applies. The fourth Division contains offences that will apply solely to solarium operators, and relates specifically to the making of claims or representations about the use of tanning units or about the operation of the solarium.

The bulk of the provisions that regulate solaria and the use of tanning units are contained within Divisions 4.2 and Division 4.3.

Tanning units are a source of non-ionising radiation, and by virtue of section 7(2) as inserted by clause 5 of this Regulation, are a regulated source of radiation. As a regulated source, all tanning units used for cosmetic purposes must be registered in accordance with Division 3.3 of the *Radiation Protection Act 2006*. Furthermore, any person that deals with a regulated source must hold a radiation licence under Division 3.2 of the *Radiation Protection Act 2006*.

What constitutes dealing is detailed in section 11 of the *Radiation Protection Act 2006*, and includes possession and use.

Licences can be subject to conditions which can impose additional requirements or obligations on a licence-holder, or restrictions on what the licence-holder is permitted to do. Licence conditions can be imposed by the licensing body, the ACT Radiation Council. The Radiation Council can impose conditions either on a case by case basis, or conditions can be imposed universally to all licences or a class of licence.

Pursuant to section 19(a) of the *Radiation Protection Act 2006* licence conditions can also be prescribed by Regulation. This is what Divisions 4.2 and 4.3 do in regard to licences authorising the use or possession of tanning units.

Operating a tanning unit amounts to using that radiation source, and to be lawfully using that source a person must hold a licence. Accordingly, they must hold a radiation licence to lawfully use a tanning unit. Division 4.2 contains licence conditions that are prescribed for all licences that authorise the use of a tanning unit. For ease of use such licences are referred to in the Regulation as a *tanning unit licence*.

A solarium, by its very nature, possesses tanning units. The tanning units possessed may also be owned by the solarium, but it is also possible for the tanning units that are possessed to be leased from the actual owner. As tanning units are now a regulated radiation source, the owner of a solarium will require a radiation licence that authorises the possession of a tanning unit, or units. Division 4.3 contains licence conditions that are prescribed for all licences that authorise the possession of a tanning unit. For ease of use, such licences are referred to in the Regulation as a *solarium licence*.

It is important to recognise that depending on whether or not a solarium owner is actually involved in the operation and running of the solarium, it is possible for a solarium owner to be granted a licence that authorises both the possession and use of tanning units. Where this is the case, the licence issued will amount to both a *solarium licence* and a *tanning unit licence*. Nevertheless, the conditions that apply to a *tanning unit licence* will only apply when the licence-holder is operating a tanning unit.

A detailed explanation of each section within clause 8 of the Regulation follows:

#### **Section 10 Definitions for part 4**

Definitions of terminology employed in Part 4 are contained in section 10.

A key definition that is included is AS/NZS 2635, which is the national standard on solaria for cosmetic purposes in Australia and New Zealand; AS/NZS 2635:2008.

Many of the other definitions are connected to AS/NZS 2635. A notable example is the Fitzpatrick skin photo type classification system. The Fitzpatrick skin photo type classification system was developed in 1975 by Harvard University dermatologist Dr Thomas Fitzpatrick MD, PHD. The system classifies a person's complexion and their tolerance of sunlight, and is used for determining the risk of sunburn and some skin conditions.

There are 6 different skin photo types under the Fitzpatrick skin photo type classification system, each with a different predisposition to burning and tanning from ultraviolet radiation exposure. The skin photo types, which are defined in section 10, escalate from skin photo type 1, which never tans and always burns, to its opposite, skin photo type 6, which never burns.

Within Part 4 the minimum erythral dose, or MED, for each skin type is listed. The definition in section 10 explains that the MED is the minimum dose of ultraviolet radiation that is required to cause sunburn. Accordingly, in any given tanning session the exposure should not be allowed to reach the MED for that skin photo type. The term tanning session is also defined in section 10.

As section 10(2) explains, a dose of ultraviolet radiation is measured in Joules per square metre, which can be expressed as either  $J/m^2$  or  $J.m^{-2}$ .

What constitutes a solarium is defined in section 10, with the principal characteristics being a commercial establishment at which tanning units are used for cosmetic purposes.

### **Section 11 Disapplication of Legislation Act, s 47 (6)**

This section expressly provides that section 47(6) of the *Legislation Act 2001* does not apply to AS/NZS 2635:2008, which is the national standard on solaria for cosmetic purposes in Australia and New Zealand.

AS/NZS 2635:2008 is an Australian and New Zealand national standard, jointly published by Standards Australia and Standards New Zealand. Australian and New Zealand standards are routinely cited by legislation in all Australian jurisdictions, and are invaluable in aiding national consistency for minimum standards and best practice.

Ordinarily the text of AS/NZS 2635:2008, and every subsequent republication, would need to be included on the ACT Legislation Register by way of a notifiable instrument. However, this would be inappropriate for Australian and New Zealand standards for several reasons, not the least of which is the frequency of their republication and the application of copyright protection. However, it is also not particularly necessary due to their national acceptance, ease of access and strong version control.

### **Section 12 Licence condition for tanning units – Act, s 19 (a)**

Section 19(a) of the *Radiation Protection Act 2006* empowers the Regulation to prescribe licence conditions. Section 12(1) establishes that the conditions contained in Division 4.2 are prescribed for licences that authorise the *use* of tanning units. For the purposes of the Regulation, such licences are referred to as tanning unit licences.

Section 12(2) clarifies that for the purposes of the legislation a person is not considered to be using a tanning unit by virtue of receiving exposure to ultraviolet radiation as a client of a solarium. This provision is designed to ensure that a person paying a solarium to get a tan from a tanning unit is not taken to be using the tanning unit, for the purposes of the *Radiation Protection Act 2006*. Even if the customer has some element of control of the tanning unit that enables the person to stop or suspend the tanning session, the customer will not be legally considered to *using* the tanning unit such as to require a radiation licence.

Furthermore, the section also clarifies that a person who uses a tanning unit at a place other than a solarium is not taken to be using a tanning unit for the purposes of the *Radiation Protection Act 2006*. This means that where a person possesses and uses a tanning unit in their own home for private use, the *Radiation Protection Act 2006* will not apply. Similarly, if a person uses a tanning unit in a health care facility as part of a form of medical treatment the person the *Radiation Protection Act 2006* also will not apply.

### **Section 13 Certain people not to be exposed to radiation from tanning units**

Pursuant to section 13(1), a tanning unit licensee must not allow a person to be exposed to ultraviolet radiation from a tanning unit unless the person's skin photo type has been assessed. That assessment must be conducted by the licensee in accordance with the Fitzpatrick skin photo type classification system, and a record made of that assessment.

The Fitzpatrick skin photo type classification system was developed in 1975 by Harvard University dermatologist Dr Thomas Fitzpatrick MD, PHD. The system classifies a person's complexion and their tolerance of sunlight, and is used for determining the risk of sunburn and some skin conditions. The Fitzpatrick skin photo type classification system is integral to the national standard on solarium for cosmetic purposes in Australia and New Zealand; AS/NZS 2635:2008.

The only exception to this rule is if the client can present a certificate from a medical practitioner about the client's skin photo type. For such a certificate to be valid and acceptable it must certify the medical practitioner has assessed the person's skin photo type in accordance with the Fitzpatrick skin photo type classification system. The result of that assessment must be clearly stated on the certificate.

If a valid certificate from a medical practitioner is presented, the licensee is not required to assess the client, but a copy of the certificate must be retained. The ACT *Legislation Act 2001* defines a medical practitioner to be a doctor. Medical practitioners are registered under the *Health Professionals Act 2004*.

Perhaps the most critical licensing conditions imposed on tanning unit licences are contained in section 13(2). That section establishes that a licensee must not, under any circumstances, permit a person assessed as having skin photo type 1 to receive exposure to ultraviolet radiation from a tanning unit. A similar prohibition is imposed on persons under 18 years of age, who must also not be allowed to be exposed to ultraviolet radiation from a tanning unit.



## **Section 14 No exposure to radiation from tanning units without written consent**

Under this provision it is a condition on a tanning unit licence to only expose a person to ultraviolet radiation from a tanning unit if the person has consented to the exposure. The provision does not expressly require that the consent be provided in writing. Nevertheless, it would be prudent for the licensee and the solarium to require that the consent be in writing. Doing so will not only provide documented evidence of compliance with this licence condition, but may well be necessary to adequately satisfy other licence conditions, such as that in section 16.

It is important to note that under section 121 of the *Radiation Protection Act 2006* the Minister can approve a form for this provision. If an Approved Form is made by the Minister, all licensees must use that form to record a customer's consent.

Section 14 also stipulates that any consent given is not valid unless it specifically relates to exposure to ultraviolet radiation on the particular occasion concerned. As such, a client cannot provide a generic, all encompassing consent. Nor can consent to multiple sessions be accepted.

Additionally, the section requires that the holder of a tanning unit licence must be satisfied that, having taken reasonable steps, the person has been given a reasonable opportunity to understand the consent given.

What amounts to a reasonable opportunity to understand the consent is likely to differ from customer to customer. For customers to whom English is a second language understanding the consent may take longer. It is possible it may even be more difficult for the licensee to satisfy themselves in such circumstances that the consent is understood. In contrast, it should be easy for a licensee to be satisfied that consent is understood by a regular customer, who is aware of the warning notices, procedures at the solarium, and the risks involved.

## **Section 15 Limits on exposure to radiation from tanning units**

Within this section is a table that sets out the minimum erythral dose, or MED, associated with skin photo types 2 to 6. An MED for skin photo type 1 is not provided as persons of this skin type are prohibited from using tanning units at a solarium.

As the dictionary in section 10 explains, the MED is the minimum dose of ultraviolet radiation needed to cause erythema, more commonly known as sunburn. The MED figure in the Table is measured in Joules per square metre, which is generally expressed as J/m<sup>2</sup>. For example, the MED for skin photo type 3 is 300 J/m<sup>2</sup>.

The condition imposed on tanning unit licensees by section 15 is that a person must not be exposed to greater than 0.9 of the MED for their skin photo type on any single occasion. As the MED is the amount at which sunburn will result, the maximum exposure permissible is set below that figure, being 0.9 of the MED.

## **Section 16 Frequency of exposure to radiation from tanning units**

The objective of this section is to prevent a person from being exposed to ultraviolet radiation from tanning units more than once in a 48 hour period.

Subsection 1 makes it a condition on a tanning unit licence that the licensee not even operate a tanning unit unless there are procedures in place at a solarium to prevent this from occurring. Furthermore, those procedures must also be implemented and followed.

Precisely what is included in the procedures at a solarium is a matter for a solarium licence-holder, but will be guided by the national standard on solaria for cosmetic purposes in Australia and New Zealand; AS/NZS 2635:2008. At the very least there needs to be a mechanism that prevents a customer from making appointments for a tanning session at the solarium on consecutive days. A signed declaration from the customer may also be appropriate.

The condition on a tanning unit licence in the following subsection goes further again. It obligates a licensee to ensure a person does not receive exposure to ultraviolet radiation from a tanning unit if the licensee knows, or ought reasonably to know, that the person has had such exposure within the preceding 48 hours.

Extending the obligation beyond actual knowledge to what the licensee ought to know is deliberate. It ensures the licensee cannot circumvent the obligation through laziness, incompetence or ignorance, wilful or otherwise. The circumstances in which a licensee ought reasonably to know a person has been exposed to ultraviolet radiation from a tanning unit within the last 48 hours will be varied, and will differ on a case by case basis. Certainly, the solarium's own appointment register and consent forms collected would inform the licensee. Certain statements or declarations from the customer could also contribute to what the licensee ought to know.

### **Section 17 People exposed to radiation from tanning units to wear protective eyewear**

The condition imposed on tanning unit licences by this section is for the licensee to ensure that a person who is exposed to ultraviolet radiation from a tanning unit is wearing protective eyewear. The protective eyewear must comply with the requirements detailed in clause 3.2 of AS/NZS 2635.

AS/NZS 2635 is the national standard on solaria for cosmetic purposes in Australia and New Zealand; AS/NZS 2635:2008.

Clause 3.2 of AS/NZS 2635 imposes a number of technical requirements for protective eyewear. The protective eyewear must form a tight seal against the skin surrounding the eyes, thereby ensuring the eyes are protected from exposure to light from all directions. Furthermore, the protective eyewear must have be able to be secured over the eyes in a way that is effective for use in horizontal, bed-style units, as well as vertical, booth-style units.

It is important for licence-holders to recognise that this licence condition requires the licence-holder to ensure that **all persons** exposed to ultraviolet radiation from a tanning unit are wearing protective eyewear. Who might be exposed can extend beyond the customer actually within the tanning unit to persons in the immediate vicinity of the tanning unit. In many instances this will also include the licence-holder themselves.

Accordingly, if the holder of a tanning unit licence is not wearing protective eyewear when necessary this could constitute a contravention of this licence condition, and possibly even amount to a breach of the Work Safety legislation.

### **Section 18 Only one person to use tanning unit at a time**

This provision makes it a condition on tanning unit licences to ensure that only one person is exposed to ultraviolet radiation from a tanning unit at any one time. Despite the heading to this section, this condition is more than just ensuring two people are not in the same tanning unit at the same time.

Although there may be many different makes and models of tanning units, tanning units are generally either a horizontal, bed-style unit, or vertical, booth-style unit. Whatever their form, tanning units emit radiation in the form of UV light. As such, persons who are not in the unit, but are positioned very close to it could be exposed. It is for this reason that the licence condition requires the licensee to ensure that only one person, the customer in the unit, is exposed to ultraviolet radiation from the unit. It would not be permissible, for this reason, for a person to sit in a chair or stand next to an operating tanning unit.

It is important for the holder of tanning unit licence to remember that the obligation to ensure no one is exposed, other than the client in the unit, includes the licensee themselves, and any other person working in the solarium. Carrying on other work tasks next to an operating tanning unit will not only amount to a contravention of this licence condition, but it is likely to amount to a breach of the Work Safety legislation.

### **Section 19 Licence condition for solariums – Act, s 19 (a)**

Section 19(a) of the *Radiation Protection Act 2006* empowers the Regulation to prescribe licence conditions. This section establishes that the conditions contained in Division 4.3 are prescribed for licences that authorise the *possession* of a tanning unit to be used in a solarium. The possession can be either as the owner or as the lessee of the tanning unit. For the purposes of the Regulation, such licences are referred to as solarium licences.

The section also clarifies who must hold a solarium licence in circumstances where a tanning unit is leased by the owner of the tanning unit to the operator of a solarium, for use in that solarium. In such circumstances the owner of the tanning unit is not, for the purposes of Division 4.3, taken to possess the tanning unit. Accordingly, it will only be the operator of the solarium who will be considered to be in possession of the tanning unit, and who will therefore require a solarium licence.

### **Section 20 Display of warning notices at solariums**

The condition imposed on solarium licences by this section is for the licensee to ensure that warning notices are displayed at the solarium. The condition requires that the warning notices and their display comply with the requirements detailed in clause 3.6.1 of AS/NZS 2635.

AS/NZS 2635 is the national standard on solaria for cosmetic purposes in Australia and New Zealand; AS/NZS 2635:2008.

Clause 3.6.1 of AS/NZS 2635 dictates that warning notices be at a minimum A4 paper size, which equates to dimensions of 21 cm by 30 cm. It also requires that the information in the warning notice is in legible print, using the Arial font. The text of the warning notice must not be less than 32 point font, with the heading of the notice not less than 36 point font.

As a specific font and font size is dictated, the implication is that handwritten notices are not acceptable. The requirement that the notice be in "legible print" ensures that font and paper colour choice is appropriate and effective. Yellow font on white paper will not comply. A dark font on a dark coloured paper is also unlikely to comply. Licensee's should also be mindful that lighting can impact on the legibility of the print on a warning notice. A warning notice positioned in a location of a tanning unit cubicle that receives little or no light will not comply. Conversely, if glare from lighting on a warning notice makes it difficult or impossible to read, it will not comply. This could arise if the warning notice is laminated or framed.

Clause 3.6.1 of AS/NZS 2635 also directs where warning notices must be displayed. A warning notice must be displayed in the entry and/or reception of the solarium, as well as in each tanning unit cubicle. The positioning of the warning notice in those locations must be within the immediate view of the client. Accordingly, warning notices need to be at eye level, and unobscured.

## **Section 22 Supervision by operator of tanning unit**

A solarium licensee is required, under this provision, to ensure every client of the solarium is directly supervised during any period when the client is using a tanning unit. The supervision of the client can only be performed by the holder of a tanning unit licence.

How the solarium licensee ensures the direct supervision of clients using a tanning unit will be a matter for the licensee. Other sections in Part 4 will apply, however, so that at a minimum a solarium licensee will need to have developed procedures, and those procedures must be both implemented and followed. In order for a solarium licensee to be satisfied that procedures are followed it may be necessary to test the procedures, or conduct regular refresher training. Furthermore, the solarium licensee may need to periodically review and update the procedures, especially if it is found that mistakes have been made, or contraventions of Part 4 have occurred.

The section further details what the supervision must involve. The client must be directly supervised by a tanning unit licensee. This means the licensee cannot delegate the supervision to a person that is not a tanning unit licensee, nor can the supervision be via a third person. The section also expressly imposes the requirement that the licensee be physically on the premises. As such, supervision by way of video or internet connection is unacceptable.

This recognises that the pre-exposure requirements, such as the skin photo type assessment, cannot be adequately performed unless the licensee is physically in the same location as the client. Furthermore, the ability of the licensee to ensure that the exposure session is terminated at the appropriate time would also be compromised if the licensee were not physically present.

### **Section 23 Requirements for people who carry on solariums**

A number of important conditions are imposed on a solarium licensee by this section.

Timing devices must be installed on each tanning unit. Furthermore, the timing devices must be able to be set to automatically switch off the unit when the maximum amount of exposure to ultraviolet radiation determined for the client's skin photo type is reached.

However, a solarium licensee must also ensure that the timing device on the tanning unit cannot be interfered with or operated by the client. Tanning units must not be able to be operated by a client of the solarium, other than to suspend or end a tanning session. This is an important condition. The assessment of skin photo types, and the associated limitations on ultraviolet radiation exposure in any given tanning session, would be pointless if a client of the solarium were able to extend the length of their exposure, or its intensity.

A client of the solarium should be able, however, to end a tanning session early, for any reason. It is also appropriate for a client to be able to suspend a tanning session, provided that the suspension of the session cannot result in the overall duration of exposure to ultraviolet radiation being extended, or the intensity of the exposure increased. The solarium licensee must also ensure that the means by which a client can stop or suspend the session is within the client's reach.

Further requirements are that the operator of a tanning unit has the ability to remotely terminate a tanning session, and that ultraviolet radiation emitted by a tanning unit is restricted to the area normally occupied by a client using the tanning unit.

Tanning units are generally either a horizontal, bed-style unit, or vertical, booth-style unit. For vertical, booth-style units, solarium licensees must ensure that at least one mechanism is provided to support the person in that position. This is an important safety requirement aimed at ensuring the client has a means of preventing themselves from falling or collapsing.

### **Section 24 Requirement to keep records and documents**

By virtue of this section, it is a condition on a solarium licence that certain records be kept, or caused to be kept, and also retained for a period of two years from the date of the record.

Copies of all skin assessments must be kept, as must copies of any certificates from a medical professional. Keeping copies of all written consent forms is also mandated by this licence condition.

It is also mandatory for records of every tanning session conducted at the solarium to be kept, which must reflect the date of the tanning session, the name of the client, the duration of the session, and a description of the tanning unit. The description of the tanning unit must also include the model number or serial number of the unit.

The keeping of these records enables audits of these documents, the production of which is required by other sections within Part 4, and comparisons made. Inconsistencies and discrepancies could indicate that breaches of other licence conditions have taken place. For example, a consent form without a corresponding skin assessment or medical certificate may indicate a customer was allowed to receive ultraviolet radiation exposure without their skin photo type having been assessed. Similarly, a record of a tanning session for which there is not a corresponding consent form may indicate consent was not properly obtained, if obtained at all.

The training of persons employed as operators of tanning units is a core licence condition for a solarium licensee. This section builds on that requirement by requiring that records be kept of all training providing, thereby providing proof that this key licence condition has been fulfilled.

Ensuring skin types are assessed, consent is obtained, and exposure is limited are vital to protecting clients from the health risks associated with tanning units. However, these important measures can be seriously undermined if tanning units are not serviced and maintained. For this reason, section 24 also requires that records of maintenance and service of tanning units be kept.

Whenever a tanning unit is sold a record also needs to be kept. Similarly, a record must be kept if a tanning unit is transferred. The transfer of a tanning unit will include the return of a leased tanning unit to the lessor that owns the unit, just as it would include the transfer of the unit to another solarium. The record to be kept must reflect the date of sale or transfer, and the name and address of the person to whom it was sold or transferred. As this record concerns the sale or transfer of a tanning unit, it is implied that accurate information about the tanning unit also be kept as part of the record. This should include the model number, and even the serial number of the unit.

It is permissible for records to be kept in an electronic format. This may include database entries, electronic diaries, or scanned copies of original records.

### **Section 25 Requirement to keep copy of regulation and standard**

Pursuant to this provision, it is a condition on all solarium licences that a copy of the Radiation Protection Regulation 2007, as well as AS/NZS 2635:2008, can be accessed by persons working at the licensee's premises. The documents can be made available to access by physically keeping hard copies at the licensee's solarium. The provision also expressly permits the documents to be accessible electronically. This could be achieved by saving an electronic version of the documents to a computer hard drive, CD, disc or USB "thumb drive". It would also be permissible for a weblink to be saved to a computer that connects directly to a website or webpage at which the documents can be accessed.

Irrespective of which method, or methods, that the licensee elects to use to make the documents accessible to staff, the licensee needs to ensure that the most recent republication or edition is what is being accessed. Both the Radiation Protection Regulation 2007 and the AS/NZS 2635:2008 can be modified and updated from time to time. In many instances the effect of the amendments will be minor. However, on occasion the changes could be significant, such that following an older version could mean best practice is not being adhered to, or possibly even the legislation is being contravened.

AS/NZS 2635:2008 is the national standard on solarium for cosmetic purposes in Australia and New Zealand, as defined in section 10.

### **Section 26 Prohibition on claims of health benefits and safety from risk**

This provision contains an offence that prohibits the operator of a solarium from making a claim or representation that the use of a tanning unit will result in any non-cosmetic health benefit. The operator of a solarium is also prohibited from making a claim or representation that the use of a tanning unit is free from risk to health. Such claims and representations are prohibited as they either cannot be medically supported, or are simply false and misleading.

Strict liability applies to the offence in section 26. Strict liability is usually employed where it is necessary to ensure the integrity of a regulatory scheme, such as those relating to public health and safety, the environment and the protection of the revenue.

Pursuant to Part 4 of the Radiation Protection Regulation 2007, to be inserted by this Regulation, the operator of a solarium will be dealing with a regulated source of non-ionising radiation, and will be required to hold a licence. As such, a solarium operator should reasonably be expected to be aware of their duties and obligations. For this reason strict liability offences are justifiable as a solarium operator will be reasonably expected to be aware of the requirements of the Radiation Protection legislation.

As a strict liability offence, the mistake of fact defence expressly applies to this offence, as do other defences in part 2.3 of the *Criminal Code 2002*.

The offence in section 26 has a maximum penalty of 10 penalty units. This is the highest penalty level that section 122(3) of *Radiation Protection Act 2006* permits to be included in the Regulation.

### **Section 27 Claims in respect of tanning sessions**

Section 16 of this Regulation imposes restrictions on the frequency in which persons can be exposed to ultraviolet radiation from tanning units. The section aims to ensure a person does not receive exposure to ultraviolet radiation from a tanning unit within 48 hours of previously receiving exposure to ultraviolet radiation from a tanning unit.

Under this provision, it is an offence for the operator of a solarium to make a claim or representation that would cause a reasonable person to believe that the solarium provides tanning sessions greater than that permitted under section 16.

Similarly, claims or representations that a solarium provides tanning sessions that would expose a client to a greater amount of ultraviolet radiation than the Radiation Protection Regulation 2007 could constitute an offence. If it can be proved that a reasonable person would believe such a claim or representation, the solarium operator will have committed an offence

Such claims and representations are prohibited as they are misleading, as honouring the claim or representation would be unlawful as it would contradict licence conditions imposed by Part 4.

Strict liability applies to the offence in section 27. Strict liability is usually employed where it is necessary to ensure the integrity of a regulatory scheme, such as those relating to public health and safety, the environment and the protection of the revenue. The control of non-ionising radiation sources requires offences that are generally at the lower end of the range of criminal conduct. These offences are contained in Division 4.4.

Pursuant to Part 4 of the Radiation Protection Regulation 2007, to be inserted by this Regulation, the operator of a solarium will be dealing with a regulated source of non-ionising radiation, and will be required to hold a licence. As such, a solarium operator should reasonably be expected to be aware of their duties and obligations. For this reason strict liability offences are justifiable as a solarium operator will be reasonably expected to be aware of the requirements of the Radiation Protection legislation.

As a strict liability offence, the mistake of fact defence expressly applies to this offence, as do other defences in part 2.3 of the *Criminal Code 2002*.

The offence in section 27 has a maximum penalty of 10 penalty units. This is the highest penalty level that section 122(3) of *Radiation Protection Act 2006* permits to be included in the Regulation.

## **Clause 9      New section 21**

Clause 8 of this Regulation will insert new sections 10 to 20, and sections 22 to 26 into the Radiation Protection Regulation 2006, but a new section 21 is deliberately excluded from clause 8.

Instead, a new section 21 is inserted into the Radiation Protection Regulation 2007 by this clause. Section 21 imposes a condition on those who hold a solarium licence to ensure that anyone who works as an operator of a tanning unit at the solarium has been properly trained. The section details the topics and fundamentals that the training must address, which includes the determination of skin types, how to safely use and operate tanning units, and the requirements of the national standard on solaria for cosmetic purposes; AS/NZS 2635:2008.

It is recognised that the requirement to ensure every person at a solarium that will operate tanning units is appropriately trained will have cost implications for a solarium. It is also possible that of the new requirements to be imposed on solarium licence-holders, compliance with this condition could take greater than six months. This may depend on the availability and cost of training programs, and the number of staff at a solarium that will require training.



For this reason, section 21 is not included in clause 8 of this Regulation because section 79 of the *Legislation Act 2001* applies to clause 8. Section 79 of the *Legislation Act 2001* provides that if a provision has not commenced within six months of the date the Regulation is notified, the provision automatically commences.

Instead, section 21 has been included in a separate clause, clause 9, to which the application of section 79 of the *Legislation Act 2001* has been displaced. As such, the commencement provisions contained in clause 2 of this Regulation instruct that clause 9 will instead automatically commence one year after the Regulation is notified, unless an earlier date is fixed by the Minister by written notice.

Essentially, this enables the obligation of solarium licence-holders, to ensure that anyone who works as an operator of a tanning unit at the solarium has been properly trained, to be delayed by as much as a year after this Regulation is notified.

#### **Clause 10 Dictionary, new definitions**

This clause amends the Dictionary in the Radiation Protection Regulation 2007 to insert new definitions relating to solaria and tanning units. With the exception of the definition of a tanning unit, all the definitions are actually contained in Part 4.