

THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

RADIATION PROTECTION (SOLARIUMS PROHIBITION)
AMENDMENT REGULATION 2013 (No 1)
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EXPLANATORY STATEMENT

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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 regulate specified sources 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.

There are no health benefits derived from cosmetic solarium use, but there is ever growing evidence about risks associated with tanning units. 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 persons using tanning units, particularly adolescents, are placing themselves at a very high risk of developing melanoma.

Responding to the dangers posed by cosmetic solarium use, most Australian governments have regulated solariums, and are now progressing towards a complete prohibition on commercial solariums.

Queensland has chosen to ban the possession of certain solaria from 1 January 2013, but allowing those registered prior to that date to remain registered. The approach taken by Queensland means commercial solariums will be phased out slowly. In contrast, the New South Wales, Victorian and South Australian governments have all committed to banning all commercial solariums, but delaying the commencement of the ban until 31 December 2014.

The ACT Government is convinced of both the need to ban commercial solariums, and of the desirability to be consistent with other Australian jurisdictions, particularly New South Wales. This is to be achieved through the ACT's Radiation Protection legislation, as ultraviolet light is a form of non-ionising radiation, and as such tanning units in solariums are a source of non-ionising radiation.

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 (Solariums Prohibition) Amendment Regulation 2013 (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, which has been scheduled for 31 December 2014.

There are currently four solarium businesses in the ACT operating 14 registered tanning units. The commencement date of 31 December 2014 has been selected in order to give these existing solarium businesses adequate time to diversify their operations and to dispose of their current tanning units appropriately. The commencement date selected will also mean that the prohibition of solariums in the ACT will coincide with the New South Wales prohibition on solariums.

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.

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, which will feature the alterations made by this Regulation.

Clause 4 Section 4A

The purpose of the current section 4A is to advise the reader that other legislation applies to offences against the Radiation Protection Regulation 2007. In this regard the *Criminal Code 2002* is specifically cited, as is section 133 of the *Legislation Act 2001* which deals with the meaning of offence penalties that are expressed in penalty units.

At present the only offences contained in the Radiation Protection Regulation 2007 are within Part 4, which clause 7 of this Regulation will remove. As the Radiation Protection Regulation 2007 will no longer contain any offences, section 4A would be an unnecessary inclusion. Accordingly, this provision deletes section 4A from the Radiation Protection Regulation 2007.

Clause 5 Section 5 heading

This provision makes a minor technical amendment to the Radiation Protection Regulation 2007.

Pursuant to section 10(1) of the *Radiation Protection Act 2006* a radiation source that is prescribed by the Radiation Protection Regulation 2007, specifically section 5, constitutes a prohibited radiation source.

At present the heading to section 5 of the Radiation Protection Regulation 2007 refers to prohibited radiation sources. This provision amends the section heading to revert to the singular; so the heading will become "Prohibited radiation source – Act, s 10 (1)".

Clause 6 Section 7 (2)

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.

Section 7 is the provision of the Radiation Protection Regulation 2007 that gives effect to section 10 of the *Radiation Protection Act 2006*.

The first subsection instructs 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.

The second subsection currently provides that for the purposes of the Radiation Protection legislation, a tanning unit used for cosmetic purposes in a solarium is declared to be a radiation source that emits or is capable of emitting non-ionising radiation. It is on this basis that solariums and their tanning units have been regulated in the ACT since November 2010.

The purpose of this Regulation is to shift the status of tanning units used for cosmetic purposes in solariums from being regulated radiation sources to prohibited radiation sources. This will be achieved through three key steps:

1. removal of the provision declaring tanning units used for cosmetic purposes in solariums to be regulated; and
2. removal of the provisions that set the detail for how tanning units used for cosmetic purposes in solariums were to be regulated; and
3. insertion of a provision declaring tanning units used for cosmetic purposes in solariums to be prohibited.

The first step involves removal of the second subsection in section 7 from the Radiation Protection Regulation 2007, which will mean tanning units used for cosmetic purposes in solariums will cease to be regulated. Clause 7 of this Regulation will remove Part 4, which contained the detail of the regulatory system for tanning units used for cosmetic purposes in solariums. The final step in the process is addressed by clause 8 of this Regulation and involves adding tanning units used for cosmetic purposes in solariums to Schedule 1 of the Radiation Protection Regulation 2007.

Clause 7 Part 4

In November 2010 Part 4 of the Radiation Protection Regulation 2007 was inserted to regulate in the ACT the use and operation of tanning units used for cosmetic purposes.

The purpose of this Regulation is progression to a complete prohibition on tanning units being used for cosmetic purposes in solariums. This will, in effect, ban commercial solariums in the ACT. As tanning units being used for cosmetic purposes in solariums will no longer be regulated, this clause removes Part 4 entirely from the Radiation Protection Regulation 2007.

Clause 8 Schedule 1, new item 4

As detailed earlier, section 10(1) of the *Radiation Protection Act 2006* establishes that a radiation source that is prescribed by the Radiation Protection Regulation 2007 constitutes a prohibited radiation source.

The relevant provision of the Radiation Protection Regulation 2007 is section 5, which provides that prohibited radiation sources are those listed in Schedule 1 of the Radiation Protection Regulation 2007. The schedule currently has three items. This provision of the Regulation adds a fourth item, which is 'a tanning unit used for cosmetic purposes in a solarium'.

Accordingly, tanning units used for cosmetic purposes in solariums will become prohibited radiation sources when this Regulation commences on 31 December 2014. This means that after the solarium prohibition commences any person dealing with these radiation sources, which includes merely being in possession of the radiation source, will be committing an offence. The maximum penalty for this offence, contained in section 62 of the *Radiation Protection Act 2006*, is 2000 penalty units, 7 years imprisonment, or both. In the ACT at the time of writing a penalty unit equates to \$110 for an individual, and \$550 for a company.

Clause 9 Dictionary

As stated earlier, the purpose of this Regulation is introduction of a complete prohibition on tanning units being used for cosmetic purposes in solariums. Accordingly provisions such as Part 4 which were about the regulation of solariums and their tanning units are to be removed from the Radiation Protection Regulation 2007.

A large number of definitions currently within the dictionary for the Radiation Protection Regulation 2007 related to terminology that was located in Part 4 of the Radiation Protection Regulation 2007. As Part 4 is being removed from the Radiation Protection Regulation 2007, so too must the associated definitions.

This provision inserts into the Radiation Protection Regulation 2007 a new dictionary, which contains only notes and definitions relevant to the provisions that remain. This includes meanings ascribed to *exempt radiation source*, *prohibited radiation source*, *solarium* and *tanning unit*.

Although now prohibited rather than regulated, what amounts to a tanning unit and a solarium for the Radiation Protection Regulation 2007 is unchanged. A tanning unit is an electrically powered appliance or installation that produces tanning of the human skin by utilising ultraviolet radiation. A solarium is a commercial establishment containing one or more tanning units that are used for cosmetic purposes.

It is therefore important to recognise that because of the way these definitions have been framed, tanning units that are used for medical or private purposes (non-commercial premises) are not dealt with by the Radiation Protection Regulation 2007. As such, tanning units used for medical purposes or private, non-commercial purposes are neither prohibited nor regulated under the ACT's radiation protection legislation.