

2010

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Ms Amanda Bresnan)

# Radiation Protection (Tanning Units) Amendment Bill 2010

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## **Radiation Protection (Tanning Units) Amendment Bill 2010**

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### **A Bill for**

An Act to amend the *Radiation Protection Act 2006* to regulate tanning units used in solarium businesses

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

- 1 **1 Name of Act**
- 2 This Act is the *Radiation Protection (Tanning Units) Amendment*  
3 *Act 2010*.
- 4 **2 Commencement**
- 5 This Act commences on a day fixed by the Minister by written  
6 notice.
- 7 *Note 1* The naming and commencement provisions automatically commence on  
8 the notification day (see Legislation Act, s 75 (1)).
- 9 *Note 2* A single day or time may be fixed, or different days or times may be  
10 fixed, for the commencement of different provisions (see Legislation  
11 Act, s 77 (1)).
- 12 *Note 3* If a provision has not commenced within 6 months beginning on the  
13 notification day, it automatically commences on the first day after that  
14 period (see Legislation Act, s 79).
- 15 **3 Legislation amended**
- 16 This Act amends the *Radiation Protection Act 2006*.
- 17 **4 New part 5A**
- 18 *insert*

## 19 **Part 5A Regulation of tanning units**

### 20 **87A Definitions—pt 5A**

21 In this part:

22 *solaria business* means a business carried on by a person for fee or  
23 reward that uses 1 or more tanning units to provide a service of  
24 tanning human skin for cosmetic purposes.

1            *tanning unit* means an electrically powered apparatus intended to  
2            produce tanning of human skin by exposing the skin to ultraviolet  
3            radiation emitted by the apparatus.

4            *tanning unit licence* means a licence issued under section 87D.

5            *tanning unit licensee* means a person who holds a tanning unit  
6            licence.

7            *ultraviolet radiation* means radiation for which the wavelengths are  
8            within the range of 100 to 400 nanometres.

9            **87B            Tanning unit licence—requirement**

10           A person must not carry on a solaria business unless the person has  
11           a tanning unit licence.

12           Maximum penalty: 50 penalty units.

13           **87C            Tanning unit licence—application**

- 14           (1) A person may apply to the chief executive for a tanning unit licence.

15           *Note 1*    If a form is approved under s 121 for this provision, the form must be  
16           used.

17           *Note 2*    A fee may be determined under s 120 for this provision.

- 18           (2) The application must be in writing and include the following  
19           information:

20           (a) if the applicant is an individual—the individual’s name, postal  
21           address, telephone number and email address;

22           (b) if the applicant is a corporation—the name, postal address,  
23           telephone number and email address of an officer of the  
24           corporation;

25           (c) the address of the premises where the solaria business is to be  
26           carried on;

27           (d) the number and kind of tanning units to be used.

- 1           (3) The chief executive may, in writing, require the applicant to give the  
2           chief executive additional information or documents that the chief  
3           executive reasonably needs to decide the application.
- 4           (4) If the applicant does not comply with a requirement under  
5           subsection (2) or (3) the chief executive may refuse to consider the  
6           application.

7           **87D        Tanning unit licence—decision on application**

- 8           (1) On an application by a person for a tanning unit licence, the chief  
9           executive must—
- 10           (a) issue the licence; or
- 11           (b) refuse to issue the licence.
- 12           (2) The chief executive must refuse to issue the tanning unit licence if  
13           the chief executive is satisfied on reasonable grounds that it is not in  
14           the public interest to issue the licence.

15           **87E        Tanning unit licence—form**

- 16           A tanning unit licence must—
- 17           (a) be in writing; and
- 18           (b) state the name and address of the person to whom the licence is  
19           issued; and
- 20           (c) identify or describe the tanning units to which the licence  
21           applies; and
- 22           (d) state the period for which the licence is issued; and
- 23           (e) state any conditions imposed on the licence by the chief  
24           executive.

1    **87F       Tanning unit licence—term**

2           A tanning unit licence is issued for the period of up to 3 years stated  
3           in the licence.

4    **87G       Tanning unit licence—conditions**

5           A tanning unit licence is subject to—

- 6           (a) the conditions set out in schedule 2; and  
7           (b) any conditions prescribed by regulation; and  
8           (c) any other conditions imposed on the licence by the chief  
9           executive.

10   **87H       Tanning unit licence—failure to comply with licence  
11           condition**

12           A tanning unit licensee commits an offence if—

- 13           (a) the licence is subject to a condition mentioned in  
14           section 87G (b) or (c); and  
15           (b) the licensee fails to comply with the condition.

16           Maximum penalty: 50 penalty units.

17           *Note*    It is also an offence to fail to comply with a condition set out in sch 2.  
18                    The penalty for the offence is set out at the foot of the relevant  
19                    provision in the schedule.

20   **87I       Tanning unit licence—notifying change in information**

21           (1) This section applies if there is a change to any of the following in  
22           relation to a tanning unit licence:

- 23           (a) the name, postal address, telephone number or email address of  
24           the licensee;  
25           (b) the address of the premises where the solarium business is  
26           carried on;

- 1 (c) the number or kind of tanning units used.
- 2 (2) The licensee must, as soon as practicable, but not later than 14 days  
3 after the day the change happens, tell the chief executive, in writing,  
4 about the change.
- 5 Maximum penalty: 10 penalty units.
- 6 (3) An offence against this section is a strict liability offence.

7 **87J Tanning unit licence—notifying ceasing business**

- 8 (1) This section applies if a tanning unit licensee stops carrying on a  
9 solaria business to which the licence relates.
- 10 (2) The licensee must, as soon as practicable, but not later than 14 days  
11 after the day the change happens—
- 12 (a) tell the chief executive, in writing, that the licensee has stopped  
13 carrying on the solaria business; and
- 14 (b) return the tanning unit licence to the chief executive.
- 15 Maximum penalty: 10 penalty units.
- 16 (3) An offence against this section is a strict liability offence.

17 **87K Tanning unit licence—amendment on chief executive’s  
18 initiative**

- 19 (1) The chief executive may, at any time and on the chief executive’s  
20 own initiative, amend a tanning unit licence (including by imposing  
21 a condition on, or amending a condition of, the licence).

22 **Example—amendment**

23 to change the level of radiation exposure from a tanning unit

24 *Note* An example is part of the Act, is not exhaustive and may extend, but  
25 does not limit, the meaning of the provision in which it appears (see  
26 Legislation Act, s 126 and s 132).

- 1 (2) However, the chief executive may amend a tanning unit licence only  
2 if—
- 3 (a) the chief executive has given the licensee written notice of the  
4 proposed amendment; and
- 5 (b) the notice states that written comments on the proposal may be  
6 made to the chief executive before the end of a stated period of  
7 at least 14 days after the day the notice is given to the licensee;  
8 and
- 9 (c) the chief executive has considered any comments made before  
10 the end of the stated period.
- 11 (3) Subsection (2) does not apply if the tanning unit licensee applied  
12 for, or agreed in writing to, the amendment.

13 **87L Tanning unit licence—amendment on application**

- 14 (1) A tanning unit licensee may apply to the chief executive to amend  
15 the licensee’s tanning unit licence (including by removing or  
16 amending a condition of the licence).

17 **Example—amendment**

18 to change the number of tanning units authorised under the licence

19 *Note 1* If a form is approved under s 121 for an application, the form must be  
20 used.

21 *Note 2* A fee may be determined under s 120 for this provision.

22 *Note 3* An example is part of the Act, is not exhaustive and may extend, but  
23 does not limit, the meaning of the provision in which it appears (see  
24 Legislation Act, s 126 and s 132).

- 25 (2) The chief executive may, in writing, require the licensee to give the  
26 chief executive additional information or documents that the chief  
27 executive reasonably needs to decide the application.

- 1 (3) If the licensee does not comply with a requirement under  
2 subsection (2), the chief executive may refuse to consider the  
3 application.
- 4 (4) In deciding whether to amend the tanning unit licence, the chief  
5 executive may consider anything the chief executive may consider  
6 under section 87D in relation to an application for a licence.
- 7 (5) On an application by a licensee to amend a tanning unit licence, the  
8 chief executive must—
- 9 (a) amend the licence in the way applied for; or  
10 (b) refuse to amend the licence.

11 **87M Tanning unit licensee—grounds for occupational**  
12 **discipline**

13 Each of the following is a *ground for occupational discipline*  
14 against a tanning unit licensee:

- 15 (a) the licensee gave information to the chief executive in relation  
16 to the application for, or an application for amendment of, the  
17 licensee's licence that was false or misleading in a material  
18 particular;
- 19 (b) the licensee has contravened, or is contravening, this Act,  
20 whether or not the licensee has been convicted or found guilty  
21 of an offence for the contravention;
- 22 (c) the licensee has contravened, or is contravening, a territory law  
23 (other than this Act) or a law of the Commonwealth, a State or  
24 another Territory, whether or not the licensee has been  
25 convicted or found guilty of an offence for the contravention.

1 **87N Chief executive may apply to ACAT for occupational**  
 2 **discipline**

3 If the chief executive believes on reasonable grounds that a ground  
 4 for occupational discipline exists in relation to a tanning unit  
 5 licensee, the chief executive may apply to the ACAT for an  
 6 occupational discipline order in relation to the licensee.

7 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out  
 8 occupational discipline orders the ACAT may make.

9 **5 Reviewable decisions**  
 10 **Schedule 1, new items 10 to 13**

11 *insert*

10	87D (1) (b)	refuse to issue tanning unit licence	applicant for tanning unit licence
11	87G (c)	impose condition on tanning unit licence	tanning unit licensee
12	87K (1)	amend tanning unit licence	tanning unit licensee
13	87L (5) (b)	refuse to amend tanning unit licence	tanning unit licensee

1 **6 New schedule 2**

2 *insert*

3 **Schedule 2 Tanning unit licences—**  
4 **conditions**

5 (see s 87G (a))

6 **2.1 Definitions—sch 2**

7 In this schedule:

8 *AS/NZS 2635* means the Australian and New Zealand Standard  
9 *AS/NZS 2635:2008 Solaria for cosmetic purposes*, as in force from  
10 time to time.

11 *Note* AS/NZS 2635 may be purchased at [www.standards.org.au](http://www.standards.org.au).

12 *client*, in relation to a tanning unit licensee, means a person  
13 attending the licensee's solaria business for a tanning session.

14 *Fitzpatrick skin photo type classification system* means the system  
15 for the classification of skin photo types mentioned in  
16 *AS/NZS 2635*.

17 *operator*, of a tanning unit, means the person operating or activating  
18 the tanning unit.

19 *skin photo type*, of a person, means the person's skin photo type  
20 worked out in accordance with the Fitzpatrick skin photo type  
21 classification system.

22 *solaria business*—see section 87A.

1            *tanning session* means a period of time during which a client of a  
2            tanning unit licensee is exposed to ultraviolet radiation from a  
3            tanning unit used by the licensee's solaria business.

4            *tanning unit*—see section 87A.

5            *tanning unit licence*—see section 87A.

6            *tanning unit licensee*—see section 87A.

7            *ultraviolet radiation*—see section 87A.

## 8            **2.2            Client age and skin type**

9            (1) A tanning unit licensee must ensure that a client is not exposed to  
10            ultraviolet radiation from a tanning unit unless—

11            (a) the client is at least 18 years old; and

12            (b) the client's skin photo type—

13                    (i) has been assessed in accordance with the Fitzpatrick skin  
14                    photo type classification system; and

15                    (ii) is not skin photo type I.

16            Maximum penalty: 100 penalty units.

17            (2) The criterion in subsection (1) (b) (i) is satisfied if—

18            (a) the operator of the tanning unit assesses the client's skin photo  
19            type in accordance with the Fitzpatrick photo type  
20            classification system; or

21            (b) the client gives the operator a certificate from a doctor  
22            (*a doctor's skin photo type certificate*)—

23                    (i) certifying that the doctor has assessed the person's skin  
24                    type in accordance with the Fitzpatrick skin photo type  
25                    classification system; and

26                    (ii) stating the results of the doctor's assessment.

1    **2.3       Client consent**

- 2       (1) A tanning unit licensee must ensure that a client is not exposed to  
3       ultraviolet radiation from a tanning unit unless the client has given  
4       written consent.

5       *Note*     If a form is approved under s 121 for a consent, the form must be used.

6       Maximum penalty: 100 penalty units.

- 7       (2) For subsection (1), the licensee must ensure—

8           (a) that the client is given a reasonable time to read the consent;  
9           and

10          (b) has taken reasonable steps to be satisfied that the client  
11          understands the information in the consent.

12    **2.4       Limits on exposure to radiation**

- 13       (1) A tanning unit licensee must ensure that a client is not exposed to  
14       more than 0.9 MED for the client's skin type from the unit during a  
15       single tanning session.

16       Maximum penalty: 50 penalty units.

- 17       (2) In this section:

18       *minimum erythemal dose* (or *MED*), for a skin type mentioned in  
19       an item in table 2.4, means the amount of ultraviolet radiation  
20       mentioned in relation to the skin type.

21       *Note*     An amount mentioned in an item in table 2.4, column 3 is the dose of  
22       ultraviolet radiation that may cause a perceptible reddening of the skin  
23       for the skin type mentioned in the item.

1 **Table 2.4 MED for skin types**

column 1 item	column 2 skin type	column 3 MED of ultraviolet radiation
1	skin photo type II	250J/m <sup>2</sup>
2	skin photo type III	300J/m <sup>2</sup>
3	skin photo type IV	450J/m <sup>2</sup>
4	skin photo type V	600J/m <sup>2</sup>
5	skin photo type VI	1 000J/m <sup>2</sup>

2 **2.5 Frequency of exposure to radiation**

3 A tanning unit licensee must ensure that procedures are in place, and  
 4 are carried out, to prevent a person from being exposed to ultraviolet  
 5 radiation from a tanning unit more than once in any 48-hour period.

6 Maximum penalty: 50 penalty units.

7 **2.6 Protective eye wear**

8 (1) A tanning unit licensee must ensure that a client who is exposed to  
 9 ultraviolet radiation from a tanning unit is wearing protective  
 10 eyewear.

11 Maximum penalty: 50 penalty units.

12 (2) In this section:

13 *protective eyewear* means eyewear that complies with the  
 14 requirements mentioned in AS/NZS 2635 in relation to eyewear.

1    **2.7       Warning notices**

2       A tanning unit licensee must ensure that a warning notice that  
3       complies with the requirements stated in AS/NZS 2635, clause 3.6.1  
4       is displayed in accordance with that clause.

5       Maximum penalty: 50 penalty units.

6    **2.8       Training of tanning unit operators**

7       A tanning unit licensee must ensure that a person the licensee  
8       employs or engages as an operator of a tanning unit is trained in the  
9       following:

- 10       (a) the safe use and operation of tanning units;
- 11       (b) the requirements and practical implementation of  
12       AS/NZS 2635;
- 13       (c) the appropriate determination of skin types in accordance with  
14       the Fitzpatrick skin photo type classification system;
- 15       (d) the appropriate determination of exposure times for different  
16       skin types from tanning units;
- 17       (e) the method of screening people for skin conditions or other  
18       conditions that would limit exposure from tanning units;
- 19       (f) the types and wavelengths of ultraviolet radiation emitted by  
20       tanning units;
- 21       (g) the appropriate procedures for sanitising tanning units, using  
22       protective eyewear and using other equipment in connection  
23       with tanning units.

24       Maximum penalty: 50 penalty units.

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1    **2.9       Supervising clients**

2       A tanning unit licensee must ensure that a client is directly  
3       supervised by a tanning unit operator whenever the client is using a  
4       tanning unit.

5       Maximum penalty: 50 penalty units.

6    **2.10       Tanning units—use by 1 person only**

7       A tanning unit licensee must ensure that 1 person only is exposed to  
8       ultraviolet radiation from a tanning unit at any one time.

9       Maximum penalty: 25 penalty units.

10   **2.11       Tanning units—operating requirements**

11       A tanning unit licensee must ensure that—

12       (a) a tanning unit cannot be operated by a client, other than to  
13       suspend or end a tanning session; and

14       (b) if a client is using a tanning unit for a tanning session, there is  
15       within reach of the client a means by which the client can  
16       suspend or end the tanning session; and

17       (c) the operator of a tanning unit can end a tanning session by  
18       remote means; and

19       (d) a timing device is installed on each tanning unit that can be set  
20       to automatically switch off the unit when the maximum  
21       amount of exposure to ultraviolet radiation for a client using  
22       the tanning unit is reached; and

23       (e) ultraviolet screening is provided to confine direct ultraviolet  
24       radiation emitted by a tanning unit to the area normally  
25       occupied by a client using the tanning unit; and

- 1 (f) if a client is exposed to ultraviolet radiation from a tanning unit  
2 in a standing position, there is at least 1 mechanism provided to  
3 support the client in that position.

4 Maximum penalty: 50 penalty units.

5 **2.12 Record keeping**

- 6 (1) A tanning unit licensee must keep the following records and  
7 documents at the licensee's solarium business premises:
- 8 (a) a record of each skin photo type assessment carried out under  
9 section 2.2 (2) (a);
- 10 (b) a copy of each doctor's skin photo type certificate given under  
11 section 2.2 (2) (b);
- 12 (c) a copy of each consent given under section 2.3 (1);
- 13 (d) a record of the following information for each tanning session  
14 conducted at the business:
- 15 (i) the date of the tanning session;
- 16 (ii) the name of the client who participated in the tanning  
17 session;
- 18 (iii) the length of the tanning session;
- 19 (iv) a description of the tanning unit used for the tanning  
20 session, including the unit's model or serial number;
- 21 (e) a record of any maintenance or servicing of a tanning unit;
- 22 (f) a record of the sale or transfer of a tanning unit operated at the  
23 business, including the date when the unit was sold or  
24 transferred and the name and address of the person to whom it  
25 was sold or transferred;
- 26 (g) a record of the training given to each person employed or  
27 engaged as an operator of a tanning unit at the business.

- 1 (2) The tanning unit licensee must keep the records and documents  
2 mentioned in subsection (1) for at least 2 years after the day the  
3 record is made or document is obtained.

4 Maximum penalty: 50 penalty units.

### 5 **2.13 Access to licence conditions and standard**

6 A tanning unit licensee must—

- 7 (a) keep a copy of this schedule and AS/NZS 2635 at the premises  
8 of the licensee's solaria business; or  
9 (b) ensure that those documents are able to be accessed  
10 electronically at the premises.

11 Maximum penalty: 25 penalty units.

#### 12 **Example—electronic access**

13 by using a computer to access the internet

14 *Note* An example is part of the Act, is not exhaustive and may extend, but  
15 does not limit, the meaning of the provision in which it appears (see  
16 Legislation Act, s 126 and s 132).

### 17 **2.14 Advertising claims about tanning units**

- 18 (1) A tanning unit licensee must not represent or claim that using a  
19 tanning unit—

- 20 (a) will result in a non-cosmetic health benefit; or  
21 (b) is safe from risk.

- 22 (2) A tanning unit licensee must not make a representation or claim that  
23 would cause a reasonable person to believe that the licensee's  
24 solaria business provides tanning sessions—

- 25 (a) to clients at a greater frequency than is permitted under  
26 section 2.4 (Limits on exposure to radiation); or

1 (b) that would expose clients to a greater amount of ultraviolet  
2 radiation than permitted under this schedule.

3 Maximum penalty: 50 penalty units.

## 4 **7 Dictionary, note 2**

5 *insert*

- 6 • occupational discipline order

## 7 **8 Dictionary, new definitions**

8 *insert*

9 *AS/NZS 2635*, for schedule 2 (Tanning unit licences—conditions)—  
10 see schedule 2, section 2.1.

11 *client*, for schedule 2 (Tanning unit licences—conditions)—see  
12 schedule 2, section 2.1.

13 *doctor's skin photo type certificate*—see schedule 2, section 2.2  
14 (2) (b).

15 *Fitzpatrick skin photo type classification system*, for schedule 2  
16 (Tanning unit licences—conditions)—see schedule 2, section 2.1.

17 *ground for occupational discipline*—see section 87M.

18 *operator*, for schedule 2 (Tanning unit licences—conditions)—see  
19 schedule 2, section 2.1.

20 *skin photo type*, for schedule 2 (Tanning unit licences—  
21 conditions)—see schedule 2, section 2.1.

22 *solaria business*, for part 5A (Regulation of tanning units) and  
23 schedule 2 (Tanning unit licences—conditions)—see section 87A.

24 *tanning session*, for schedule 2 (Tanning unit licences—  
25 conditions)—see schedule 2, section 2.1.

26 *tanning unit*, for part 5A (Regulation of tanning units) and  
27 schedule 2 (Tanning unit licences—conditions)—see section 87A.

1            *tanning unit licence*, for part 5A (Regulation of tanning units) and  
2            schedule 2 (Tanning unit licences—conditions)—see section 87A.

3            *tanning unit licensee*, for part 5A (Regulation of tanning units) and  
4            schedule 2 (Tanning unit licences—conditions)—see section 87A.

5            *ultraviolet radiation*, for part 5A (Regulation of tanning units) and  
6            schedule 2 (Tanning unit licences—conditions)—see section 87A.

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## Endnotes

**1        Presentation speech**

Presentation speech made in the Legislative Assembly on        2010.

**2        Notification**

Notified under the Legislation Act on                                2010.

**3        Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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