

2010

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

RADIATION PROTECTION (TANNING UNITS) AMENDMENT BILL 2010

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

OVERVIEW

The Radiation Protection (Tanning Units) Amendment Bill 2010 intends to amend the *Radiation Protection Act 2006* in order to regulate the operation of tanning units used in solaria businesses.

Solaria can have serious consequences on people's health as they increase the risk of developing skin cancer, including melanoma. A 2009 World Health Organisation study placed solaria in the same cancer risk category as tobacco smoking.

To minimise the risk that solaria can have on people's health, this Bill seeks to enforce key provisions of the Australia/New Zealand Standard on Solaria for cosmetic purposes (AS/NZS 2635:2008).

These provisions include:

- restricting solaria use to people over 18 years old and those people not having very pale skin (Type 1);
- cutting the UV intensity on sun beds by 40 per cent;
- banning unsupervised operations;
- ensuring staff are trained in using equipment and assessing skin photo types;
- ensuring clients complete a skin assessment and consent form;
- ensuring protective eyewear is always worn;
- making no claims of non-cosmetic health benefits or that solarium use is safe; and
- keeping client records for at least two years.

If this Bill is successful, owners of solaria businesses will have to acquire a licence from the ACT Government. To keep the licence the owner must ensure that tanning unit operators have undertaken approved training and meet licence conditions. If the operator or owner of the tanning unit is found to have not met licence conditions, the owner can face loss or suspension of licence, and/or payment of penalty units.

DETAIL

Clause 1 Name of Act

This clause is a technical clause and sets out the name of the proposed Act as the *Radiation Protection (Tanning Units) Amendment Act 2010*.

Clause 2 Commencement

This clause is a technical clause setting out when commencement of the Act will occur. It is intended that commencement will occur on a day/or days fixed by the Minister by written notice.

Clause 3 Legislation amended

This clause identifies the Act to be amended, namely the *Radiation Protection Act 2006*.

Clause 4 New part 5A

This clause inserts a new part into the *Radiation Protection Act 2006*, which provides for the tanning unit licensing system.

Section 87A

This section provides the key definitions that affect the tanning unit licensing system.

Section 87B

This section provides that only people who have a tanning unit licence can operate a solaria business for fee or reward. If a person provides such a service for fee or reward, and does not have a licence, they face a penalty of up to 50 penalty units.

It should be noted that this Bill requires only the owner of a solaria business to acquire a licence, and not solarium employees. The Regulatory Impact Statement for the Victorian Radiation Amendment (Tanning Units and Fees) Regulations 2008 found that if the solarium employees were to be licensed, while there may be some small additional benefits in terms of improved compliance, overall licensing costs would be substantially greater, generating a lower net present value and a significantly smaller benefit/cost ratio. The Regulatory Impact Statement is available at http://www.health.vic.gov.au/environment/downloads/radiation/solaria_regulatory.pdf.

Section 87C

This section requires solaria business owners to apply for a tanning unit licence through the Chief Executive using the approved form, and paying the approved fee.

The application must be in writing and include the applicant's:

- name, postal address, telephone number and email address;
- address of the premises where the solarium business is to be carried on; and
- number and kind of tanning units to be used.

The Chief Executive may, in writing, require further information from the applicant to assist in deciding whether they should be granted a licence.

Section 87D

This section requires the Chief Executive to decide whether the licence should be granted to the applicant. The Chief Executive must refuse the granting of a licence if he or she is satisfied on reasonable grounds that it is not in the public interest to issue the licence (for example, if the applicant has a poor history with regards to solarium operations and safety).

Section 87E

This section states that the licence must be in writing and:

- include the name and address of the licence holder;
- identify or describe the tanning units to which the licence applies;
- state how long the licence goes for; and
- state any conditions imposed on the licence by the Chief Executive.

Section 87F

This section provides for a licence to be granted for up to 3 years.

Section 87G

This section provides for the licence conditions to include:

- those conditions set out in schedule 2 of the Act;
- any conditions prescribed by regulation; and
- any other conditions imposed on the licence by the Chief Executive.

It is also an offence to fail to comply with the licence conditions, which are detailed in Schedule 2.

Section 87H

This section provides that if a licensee does not comply with the licence conditions, it is an offence. The maximum penalty for failing to comply with licence conditions is 50 penalty units.

Section 87I

This section requires a tanning unit licensee to inform the Chief Executive in writing within 14 days if any of the following changes, the:

- name, postal address, telephone number or email address of the licensee;

- address of the premises where the solarium business is carried on; and
- number or kind of tanning units used.

If a licensee fails to do this, they face a maximum penalty of 10 penalty units. This is a strict liability offence.

Section 87J

This section requires a tanning unit licensee to inform the Chief Executive in writing within 14 days if they stop their solarium business which the licence relates to. If a licensee fails to do this, they face a maximum penalty of 10 penalty units. This is a strict liability offence.

Section 87K

This section allows the Chief Executive to amend a tanning unit licence at any time. However the Chief Executive can only do this if the:

- Chief Executive has already given the licensee written notice of the proposed change;
- the notice states that written comments on the proposal may be made to the Chief Executive within a stated time period, being at least 14 days; and
- Chief Executive has considered any comments received back within that time period.

Section 87L

This section allows a tanning unit licensee to apply to have their licence changed. The Chief Executive can request additional information to assist them in making a decision about this, and refuse to approve the changes if they don't receive the changes they requested. The Chief Executive must also consider section 87D when making a decision.

Section 87M

This section specifies the grounds for occupational discipline against a tanning unit licensee, being the licensee:

- gives false or misleading information to the Chief Executive when applying for a licence, or requesting a change to a licence;
- has or is contravening this Act, whether or not the licensee has been convicted or found guilty of the offence; or
- has or is contravening any other law, be it an ACT law, Commonwealth law, or any other jurisdiction in which they practise, whether or not the licensee has been convicted or found guilty of the offence.

Section 87N

This section provides for the Chief Executive to apply to ACAT for an occupational discipline order in relation to the licensee, if the Chief Executive believes on reasonable grounds that a ground for occupational discipline exists.

Clause 5 Reviewable decisions
Schedule 1, new items 10 to 13

This clause provides for the following decisions made by the Chief Executive to be reviewable decisions, and can be appealed to ACAT:

- 87D (1) (b), refusing to issue tanning unit licence;
- 87G (c), imposing conditions on tanning unit licence;
- 87K (1), amending tanning unit licence; and
- 87L (5) (b), refusing to amend tanning unit licence.

Clause 6 New schedule 2
Tanning unit licences—conditions

Clause 6 inserts a new schedule into the *Radiation Protection Act 2006* to provide for the conditions applying to the tanning unit licence.

Section 2.1

This section outlines the key definitions relating to the conditions of the tanning unit licence.

Section 2.2

This section requires the licensee to ensure that people under the age of 18 or that have skin photo type 1 do not use their tanning unit/s.

The licensee must also ensure that a client's skin type is assessed using the Fitzpatrick skin photo type classification system. The skin assessment can be performed by the operator of the tanning unit or by a doctor (with provision of a doctor's skin photo type certificate).

If these licence conditions are breached the maximum penalty is 100 penalty units.

Section 2.3

This section requires the licensee to ensure a client does not use a tanning unit unless the client has filled in and provided written consent. If this licence condition is breached the maximum penalty is 100 penalty units.

The licensee must also ensure the client has enough time to read the consent form, and is satisfied that the client understands what the consent form means.

Section 2.4

This section requires the licensee to ensure that a client isn't exposed to more ultraviolet radiation that is permissible for their skin type. The maximum levels

of ultraviolet radiation for each skin type are specified in table 2.4. If this licence condition is breached the maximum penalty is 50 penalty units.

Section 2.5

This section requires the licensee to ensure that its business has procedures in place, and that those procedures are carried out, to prevent a client from using a tanning unit more than once in any 48-hour period. If this licence condition is breached the maximum penalty is 50 penalty units.

Section 2.6

This section requires the licensee to ensure that a client wears the appropriate protective eyewear when using a tanning unit. If this licence condition is breached the maximum penalty is 50 penalty units.

Section 2.7

This section requires the licensee to ensure that there is a warning notice about the risk that tanning units play in the development of cancer. The warning notice must also display specified rules that apply to using a tanning unit. The warning notice must comply with clause 3.6.1 of the Australia/New Zealand Standard on Solaria for cosmetic purposes (AS/NZS 2635). If this licence condition is breached the maximum penalty is 50 penalty units.

Section 2.8

This section requires the licensee to ensure that the people employed to operate the tanning unit/s is trained in the:

- safe use and operation of tanning units;
- requirements and practical implementation of Australia/New Zealand Standards;
- appropriate determination of skin types using the Fitzpatrick skin photo type classification system;
- appropriate determination of exposure times for different skin types from tanning units;
- method of screening people for skin conditions or other conditions that would limit exposure from tanning units;
- types and wavelengths of ultraviolet radiation emitted by tanning units; and
- appropriate procedures for sanitising tanning units, using protective eyewear and using other equipment in connection with tanning units.

If this licence condition is breached the maximum penalty is 50 penalty units.

Section 2.9

This section requires the licensee to ensure that a client is directly supervised by a tanning unit operator whenever the client is using a tanning unit. If this licence condition is breached the maximum penalty is 50 penalty units.

Section 2.10

This section requires the licensee to ensure that a tanning unit is only used by one person at a time. If this licence condition is breached the maximum penalty is 25 penalty units.

Section 2.11

This section requires the licensee to ensure that:

- a client can't operate a tanning unit except to suspend or end a tanning session;
- if a client wants to suspend or end a tanning session there is within reach a means to do that;
- the operator of a tanning unit can end a tanning session remotely;
- a timing device is installed on each tanning unit that can be set to automatically switch off the unit when the maximum amount of exposure to ultraviolet radiation for a client using the tanning unit is reached;
- ultraviolet radiation emitted by a tanning unit is restricted to the area normally occupied by a client using the tanning unit; and
- if a client is exposed to ultraviolet radiation from a tanning unit in a standing position, there is at least 1 mechanism provided to support the client in that position.

If these licence conditions are breached the maximum penalty is 50 penalty units.

Section 2.12

This section requires the licensee to ensure that the following records are kept on the business premises:

- skin photo type assessments;
- consent forms;
- key details about every tanning session;
- maintenance or servicing of the tanning unit/s;
- sales or transfer of tanning unit/s; and
- the training the operator of tanning unit/s receives.

If these licence conditions are breached the maximum penalty is 50 penalty units.

Section 2.13

This section requires the licensee to ensure that a copy of this schedule, being schedule 2 (Tanning unit licences—conditions) and the Australian/New Zealand Standards are kept on the business' premises, and can be accessed at the premises electronically. If these licence conditions are breached the maximum penalty is 25 penalty units.

Section 2.14

This section requires the licensee to ensure it doesn't represent or claim that using a tanning unit will result in a non-cosmetic health benefit, or that using a tanning unit is safe from risk. The licensee must also make sure the business doesn't make a representation or claim that would cause a reasonable person to believe that the business provides tanning sessions at a higher exposure than is permissible for a person's skin type. If these licence conditions are breached the maximum penalty is 50 penalty units.

Clause 7 Dictionary, note 2

This clause inserts a note in the dictionary that the Legislation Act defines the term 'occupational discipline order'.

Clause 8 Dictionary, new definitions

This clause inserts a number of new definitions into the *Radiation Protection Act 2006* that relate to tanning units.