



Australian Capital Territory

Radiation Protection (Tanning Units) Amendment Regulation 2010 (No 1)

Subordinate Law SL2010-29

The Australian Capital Territory Executive makes the following regulation under the *Radiation Protection Act 2006*.

Dated 28 June 2010.

KATY GALLAGHER
Minister

SIMON CORBELL
Minister



Australian Capital Territory

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1 Name of regulation

This regulation is the *Radiation Protection (Tanning Units) Amendment Regulation 2010 (No 1)*.

2 Commencement

- (1) This regulation commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision, other than s 9, has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

- (2) However, if section 9 has not commenced within 1 year beginning on this regulation's notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to section 9.

3 Legislation amended

This regulation amends the *Radiation Protection Regulation 2007*.

4 New section 4A

insert

4A Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 Section 7

substitute

7 Regulated radiation source—Act, s 10 (2)

- (1) For the Act, section 10 (2) (a), the exemption level for a radiation source under the national directory is prescribed.
- (2) For the Act, section 10 (2) (b), a tanning unit used for cosmetic purposes in a solarium is prescribed.

6 Part 4

renumber as part 10

7 Sections 10, 11 and 12

renumber as sections 100, 101 and 102

8 New part 4

insert

Part 4 Solariums and tanning units**Division 4.1 Sources and facilities to which pt 4 applies****10 Definitions—pt 4**

(1) In this part:

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

Note AS/NZS 2635 may be purchased at www.standards.org.au.

erythemally effective dose means the dose obtained by weighting the spectral distribution of ultraviolet radiation incident on the subject with the erythemal effectiveness set by the CIE across the ultraviolet radiation wavelength range (280nm to 400nm) and then integrating to obtain the total dose in J/m².

Fitzpatrick skin photo type classification system means the system for the classification of skin photo types, mentioned in AS/NZS 2635.

minimum erythemat dose (or **MED**) means the minimum dose of ultraviolet radiation required to produce erythema (sunburn) in the skin.

skin photo type 1 means skin which always burns and never tans (pale white skin).

skin photo type 2 means skin which always burns easily and tans minimally (white skin).

skin photo type 3 means skin which burns moderately and tans uniformly (light brown skin).

skin photo type 4 means skin which burns minimally and always tans well (moderate brown skin).

skin photo type 5 means skin which rarely burns and tans profusely (dark brown skin).

skin photo type 6 means skin which never burns (deeply pigmented dark brown to black skin).

solarium means a commercial establishment containing one or more tanning units that is or are used to provide a service of tanning human skin for cosmetic purposes.

solarium licence—see section 19.

solarium operator means a person who carries on a solarium.

tanning session means a period of time during which a client of a solarium is exposed to ultraviolet radiation from a tanning unit operated by the solarium.

tanning unit licence—see section 12.

(2) In this section:

CIE means Commission Internationale de l'Eclairage.

J/m² means Joules per square metre, and has the same meaning as J.m⁻².

11 Disapplication of Legislation Act, s 47 (6)

The Legislation Act, section 47 (6) does not apply to AS/NZS 2635.

Note The text of an applied, adopted or incorporated instrument, if applied as in force from time to time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (6) is not disappplied (see s 47 (7)).

Division 4.2 Licence conditions—tanning units

12 Licence condition for tanning units—Act, s 19 (a)

- (1) The conditions set out in this division are prescribed for a licence to use a tanning unit (a *tanning unit licence*).
- (2) A person is not taken to use a tanning unit if—
 - (a) the person is exposed to ultraviolet radiation from a tanning unit as the client of a solarium; or
 - (b) the person uses a tanning unit at a place other than a solarium.

Example—place other than a solarium

a tanning unit set up at home for private use

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

13 Certain people not to be exposed to radiation from tanning units

- (1) It is a condition of a tanning unit licence that the licensee not expose a person to ultraviolet radiation from the unit unless—
 - (a) the licensee has assessed the person's skin type in accordance with the Fitzpatrick skin photo type classification system; or
 - (b) the person has provided the licensee with a certificate from a medical practitioner that certifies that the medical practitioner has assessed the person's skin type in accordance with the

Fitzpatrick skin photo type classification system and states the results of that assessment.

- (2) It is a condition of a tanning unit licence that the licensee not expose a person to ultraviolet radiation from the unit if—
 - (a) the person is under 18 years old; or
 - (b) the person's skin type is skin photo type 1.

14 No exposure to radiation from tanning units without written consent

- (1) It is a condition of a tanning unit licence that the licensee not expose a person to ultraviolet radiation from the unit unless the person has consented to the exposure.

Note If a form is approved under the Act, s 121 for this provision, the form must be used.

- (2) Consent is not valid under subsection (1) unless—
 - (a) it relates only to exposure to ultraviolet radiation on the particular occasion concerned; and
 - (b) the licensee has taken reasonable steps to satisfy himself or herself that the person has been given a reasonable opportunity to understand the consent given.

15 Limits on exposure to radiation from tanning units

- (1) It is a condition of a tanning unit licence that the licensee not expose a person to more than 0.9 MED for the person's skin type from the unit on any single occasion.
- (2) For this section, MED for a particular skin type stated in table 15, column 2, means the amount of ultraviolet radiation stated for the skin type in column 3.

Table 15 MED for skin types

column 1 item	column 2 skin type	column 3 MED
1	skin photo type 2	250J/m ²
2	skin photo type 3	300J/m ²
3	skin photo type 4	450J/m ²
4	skin photo type 5	600J/m ²
5	skin photo type 6	1 000J/m ²

16 Frequency of exposure to radiation from tanning units

- (1) It is a condition of a tanning unit licence that the licensee not operate a tanning unit at a solarium unless procedures are in place, and are implemented, to prevent a person from being exposed to ultraviolet radiation from a tanning unit at the solarium more than once in any 48-hour period.
- (2) It is a condition of a tanning unit licence that the licensee not expose a person to ultraviolet radiation from a tanning unit if the operator knows, or ought reasonably to know, that the person has been exposed to ultraviolet radiation from a tanning unit within the preceding 48 hours.

17 People exposed to radiation from tanning units to wear protective eyewear

It is a condition of a tanning unit licence that the licensee ensure that a person who is exposed to ultraviolet radiation from a tanning unit is wearing protective eyewear that complies with the requirements mentioned in AS/NZS 2635 in relation to eye protection.

18 Only one person to use tanning unit at a time

It is a condition of a tanning unit licence that the licensee ensure that not more than one person is exposed to ultraviolet radiation from a single unit at any one time.

Division 4.3 Licence conditions—solarium licences

19 Licence condition for solariums—Act, s 19 (a)

- (1) The conditions set out in this division are prescribed for a licence to possess, either as owner or lessee, a tanning unit used in a solarium (a *solarium licence*).
- (2) For subsection (1), a person who owns a tanning unit that is leased to another person who is the operator of a solarium is not taken, by reason of that fact alone, to possess the unit.

20 Display of warning notices at solariums

It is a condition of a solarium licence that the licensee ensure that a warning notice that complies with the requirements mentioned in AS/NZS 2635, clause 3.6.1 is displayed in accordance with that clause.

22 Supervision by operator of tanning unit

- (1) It is a condition of a solarium licence that the licensee ensure that a client of the licensee's solarium is directly supervised by the holder of a tanning unit licence during any period when the client is using a tanning unit at the business.

(2) In this section:

exposure session means a session of exposure to ultraviolet radiation in a solarium, if the total exposure does not exceed 0.9 MED.

supervision means being on the premises to ensure that all pre-exposure requirements are fulfilled and to ensure that the exposure session is terminated at the appropriate time.

23 Requirements for people who carry on solariums

It is a condition of a solarium licence that the licensee ensure that—

- (a) a tanning unit at the licensee's solarium cannot be operated by a client of the solarium, other than to stop or suspend a tanning session; and
- (b) there is within the reach of a client using a tanning unit at the licensee's solarium a means by which the client may stop or suspend a tanning session involving the unit; and
- (c) the operator of a tanning unit at the licensee's solarium is able to stop a tanning session remotely, and
- (d) a timing device is installed on each tanning unit at the licensee's solarium that can be set to automatically switch off the unit when the maximum amount of exposure to ultraviolet radiation mentioned in section 15 for the client is reached; and
- (e) ultraviolet screening is provided to contain direct ultraviolet radiation emitted by a tanning unit to the area normally occupied by a client using the tanning unit; and
- (f) if a client is exposed to ultraviolet radiation from a tanning unit in a standing position, there is at least one mechanism provided to support the person in that position.

24 Requirement to keep records and documents

- (1) It is a condition of a solarium licence that the licensee keeps, or causes to be kept, the following records and documents in accordance with subsection (2) at the premises of the solarium at which tanning units are operated:
 - (a) a record of each skin type assessment required to be carried out under section 13 (1) (a);
 - (b) a copy of each certificate provided under section 13 (1) (b) containing the results of a skin type assessment by a medical practitioner;
 - (c) any written consent forms obtained from clients for section 14;
 - (d) a record of the following for each tanning session conducted at the solarium:
 - (i) the date of the tanning session;
 - (ii) the name of the client;
 - (iii) the duration of the tanning session;
 - (iv) a description of the tanning unit (including the model number or serial number of the unit);
 - (e) a record of maintenance or each service of a tanning unit;
 - (f) a record of the sale or transfer of each tanning unit operated at the licensee's solarium, including the date when the unit was sold or transferred and the name and address of the person to whom it was sold or transferred;
 - (g) a record of the training provided to each person employed or engaged as an operator of tanning units at the licensee's solarium.

- (2) A record or document required to be kept by a person under this section must be retained by the person for at least 2 years after the record is made or the document obtained.

25 Requirement to keep copy of regulation and standard

It is a condition of a solarium licence that a copy of this regulation and AS/NZS 2635—

- (a) be kept by the licensee at the premises of the licensee's solarium at which tanning units are operated; or
(b) can be accessed electronically at the premises.

Division 4.4 Offences—solarium operators

26 Prohibition on claims of health benefits and safety from risk

- (1) A solarium operator must not make a representation or claim that—
(a) the use of a tanning unit will result in any non-cosmetic health benefit; or
(b) there is no risk to health from the use of a tanning unit.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

27 Claims in respect of tanning sessions

- (1) A solarium operator must not make a representation or claim that would cause a reasonable person to believe that the operator's solarium provides tanning sessions—
(a) to clients at a greater frequency than permitted by this regulation; or

- (b) that would expose clients to a greater amount of ultraviolet radiation than permitted by this regulation.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

9 New section 21

insert

21 Training of tanning unit operators

It is a condition of a solarium licence that the licensee ensure that any person who works as an operator of tanning units at the licensee's solarium receives training in—

- (a) the safe use and operation of tanning units; and
- (b) the requirements and practical implementation of AS/NZS 2635; and
- (c) the appropriate determination of skin types in accordance with the Fitzpatrick skin photo type classification system; and
- (d) the appropriate determination of exposure times for different skin types from tanning units; and
- (e) the method of screening people for skin conditions or other conditions that would limit exposure from tanning units; and
- (f) the types and wavelengths of ultraviolet light that are emitted by tanning units; and
- (g) the appropriate procedures for sanitising tanning units, using protective eyewear and using other equipment in connection with tanning units.

10 Dictionary, new definitions

insert

AS/NZS 2635, for part 4 (Solariums and tanning units)—see section 10.

erythemally effective dose, for part 4 (Solariums and tanning units)—see section 10.

Fitzpatrick skin photo type classification system, for part 4 (Solariums and tanning units)—see section 10.

minimum erythematol dose (or *MED*), for part 4 (Solariums and tanning units)—see section 10.

skin photo type 1, for part 4 (Solariums and tanning units)—see section 10.

skin photo type 2, for part 4 (Solariums and tanning units)—see section 10.

skin photo type 3, for part 4 (Solariums and tanning units)—see section 10.

skin photo type 4, for part 4 (Solariums and tanning units)—see section 10.

skin photo type 5, for part 4 (Solariums and tanning units)—see section 10.

skin photo type 6, for part 4 (Solariums and tanning units)—see section 10.

solarium, for part 4 (Solariums and tanning units)—see section 10.

solarium licence, for part 4 (Solariums and tanning units)—see section 19.

solarium operator, for part 4 (Solariums and tanning units)—see section 10.

tanning session, for part 4 (Solariums and tanning units)—see section 10.

tanning unit means an electrically powered appliance or installation intended to produce tanning of the human skin by utilizing ultraviolet radiation.

tanning unit licence, for part 4 (Solariums and tanning units)—see section 12.

Endnotes

1 Notification

Notified under the Legislation Act on 5 July 2010.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
