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# Submission form

## Reducing Harm from Commercial Sunbeds: Consultation document

The closing date for submissions is: **5 pm, Friday 12 February 2016.**

Submitters are encouraged to make submissions by email, using this response form, to:

sunbeds@moh.govt.nz

Alternatively, your completed form can be mailed to:

Sunbed Consultation  
Environmental Health Team  
Ministry of Health  
PO Box 5013  
Wellington 6145

### **Protection of commercially sensitive information**

Public reporting on this consultation will seek to avoid prejudice to the commercial position of respondents who provide commercially sensitive information. Submitters are therefore asked to clearly indicate any information they wish to have treated as confidential commercially sensitive information.

### **Declaration of interests**

All submitters are asked to declare any financial or other interests they may have in businesses associated with the artificial UV tanning industry, or any other business venture that may be affected, positively or negatively, as a result of the proposals contained within this document. Other stakeholders are asked to provide a short statement or explanation of the purpose or focus of any organisations they represent that have an interest in the proposals.

### **Official Information Act 1982**

Your submission and any correspondence you send to the Ministry may be requested by a person under the Official Information Act 1982 (the Act). If there is any part of your submission that you consider should be properly withheld under the Act, please make this clear in your submission, noting the reasons why you would like the information to be withheld (eg, you may consider some information to be commercially sensitive).

If information from your submission is requested under the Act, the Ministry is obliged by law to handle such information in accordance with the Act. In many cases this will mean that we will have to release your submission and supporting information to the person who requested it, unless there is a justifiable reason for withholding this information under the Act.

### **No obligation to respond to all questions**

Please feel free to respond to only the questions you wish to.

# Consultation questions

## Problem definition

### For businesses supplying sunbed services or sunbeds

To enable the Ministry to assess the potential impacts on industry if regulations are developed, we would like your feedback on the following questions.

1. What sort of services does your business provide/undertake (eg, import or manufacture of sunbeds; provision of sunbed services at your premises or as a mobile service; rental of sunbeds for use in private homes)?

2. Is the commercial supply of sunbed services the sole focus of your business?

Yes

No

If not, what is the main focus of your business (eg, beauty salon, gym)?

3. How many people do you employ in the provision of sunbed services?

4. What proportion of your business revenue comes from the provision of sunbed services (and, if you are willing to divulge this information, what is your annual revenue in \$NZ from those services)?

Proportion of business revenue from provision of sunbed services	Annual revenue from sunbed services

5. To how many people would you provide sunbed services? (Feel free to advise on the basis of an average per week, per month or per year.)

6. How many sunbed tanning sessions would a client typically have over a period of a month? Three months? A year?

A month	Three months	A year

7. How many UV devices (sunbeds or other) do you have on your premises?

8. Are you aware of any other data on the commercial provision of sunbed services in New Zealand?

Yes

No

Please comment below.

9. Are you aware of any data on the **private** use of sunbeds in New Zealand?

Yes

No

Please comment below.

### For businesses that hire out sunbeds

10. How many UV devices (sunbeds or other) do you own?

11. How many people would hire sunbeds each year, and what would be a common period of time a person would hire a sunbed for?

How many people hire sunbeds each year?	Common period of time sunbeds hired for

12. How many staff do you have in your business?

13. When hiring out sunbeds, what do you do to minimise risks for users of those sunbeds?

**For the public**

14. Do you use sunbed services?

- Yes  
 No

*If your answer to question 14 is yes:*

15. What is your age?

- Under 18  
 18–35 years  
 36–50 years  
 Over 50

16. How often do you use sunbed services? (Feel free to report use by number of times per week, month or year.)

17. Where do you usually receive sunbed services (eg, in your home by way of your own sunbed; or from a business that brings a sunbed to your home; or at sunbed premises that you visit for tanning sessions)?

18. Do you consider you have a good understanding of the risks of UV tanning?

- Yes  
 No

19. Have you considered using, or have used, alternative tanning methods (eg, spray tans or self-applied tans)?

Yes

No

If not, why have you not considered or used these alternative tanning methods?

### **For everyone**

20. Do you have an opinion, or any further points to add, regarding the Problem Definition outlined above?

The problem definition is mentioned in a couple areas and we are unsure if feedback is being requested for part of section A, the whole of section B, or both?  
However, the summary in paragraphs 30-32 appears to outline the problem well.

### **Policy objective**

21. Do you support the stated policy objective and assessment criteria outlined above?

Yes

No

Why / why not?

22. Are there other policy objective(s) or assessment criteria that you think should apply as well/instead?

Yes

No

If yes, what objectives and/or criteria would you support?

# The proposal

## Component 1: Licensing

23. Do you support the licensing of businesses that provide sunbed services on a commercial basis?

Yes

No

Why/why not?

Regional Public Health supports increased controls to reduce the public's exposure to sunbed services. However, overall we support setting a direction for a future that bans the provision of sunbed services.

24. If you support licensing, do you support an approach of licensing both sunbed premises and operators?

Yes

No

Why/why not?

Licensing of both the premises and the operator appears to be out of step with other licensing regimes and will increase the regulatory and compliance costs. Although this could act as a lever to decrease the number of premises the public could be exposed to, there is also a cost in terms of finding sufficient human resource to administer the system. Simplification of the regime could still be effective at improving the compliance of operators with the standard AS/NZS 2635:2008, while not diverting unnecessary resource from other public health action.

There should be a requirement for operators to undertake training and be able to demonstrate an appropriate level of knowledge.

25. If you support licensing, do you support licensing businesses that hire out sunbeds, and operators who set up sunbeds in a private hire situation?

Yes

No

Why/why not?

There is currently very little known about these operators and the risk to individuals is possibly greater as they are unsupervised and sessions are unlimited. There is potential for excessive use and/or use by under 18s or others at high risk of ill health from UV exposure. Ensuring these clients are properly informed is important. A licensing system would allow this particular industry to be monitored and set a standard for the information to be provided to clients.

26. If you do not support the proposed approach to licensing described above, but do support licensing, is there an alternative form of licensing that you would prefer?

Yes

No

If so, please provide details.

27. Do you think the scale of proposed licence fees proposed in the consultation document is reasonable?

Yes

No

If not, what are reasonable licensing fees?

Cost recovery is important however the licencing fees do not seem reasonable when compared to the cost of other licences, e.g. Auckland Council Licence \$246, firearms licence\$126.50, licence for high risk alcohol premises with at least 2 previous issues \$1,209.

The cost of licensing and training as a minimum \$1858 is also disproportionate to the proposed infringement notice fines of \$250 for an individual and \$500 for a body corporate. This may mean operators are more likely to risk a relatively small fine than an expensive licensing process.

28. Do you support the detail of the proposed licensing scheme, as set out above?

Yes

No

Please advise what you do and do not support, and why/why not.

*For businesses*

29. What mechanism would you prefer to use to apply for a licence (eg, online application form, paper-based form provided by mail, other?)

## Component 2: Mandatory operational practices

### Training

30. Would you support training being a core focus of the mandatory operational practices?

Yes

No

Why/why not?

Training of operators is essential to a successful licensing regime. This should include:

- Information on their responsibilities under any new legislation as well as enforcement and penalties.
- Education on the risks and the assessment of skin types etc.
- Clarity on what information is required to be given to clients and when.
- Record keeping and retention, and meeting privacy of health information requirements. (See feedback on Question 33).

31. Which approach(es) to training would you support? Why?

Approach(es) to training you would support	Reasons
<p>The training programme would have to be developed at a national level for consistency.</p> <p>The standard training programme could then be delivered by PHUs (as long as full cost recovery is possible and there is training for PHU staff to upskill in order to provide training to industry – there is a significant technical component to what needs to be understood) or by private companies or other agencies. The ministry could develop training packages which have a charge per person to facilitate cost recovery from private companies.</p> <p>On line training is another option. This would have to be supported by a requirement that operators are able to demonstrate reasonable knowledge.</p>	<p>A nationally agreed training programme would be cheaper to produce and ensure consistency.</p> <p>To ensure effective training delivery providers will have to be up skilled and certified themselves. The delivery of training courses will also be time consuming. PHUs are already stretched and would require funding and upskilling on technical knowledge in order to deliver this service. Currently a lot of the solarium assessment survey work is contracted out and so there is a technical knowledge gap that needs to be addressed.</p> <p>The potential to obtain training from private suppliers may make training easier to access, would set a market price for the training and remove any perceived conflict of interest by regulators delivering the training and subsequently enforcing.</p> <p>On line training would be cheaper to deliver and easier to access however it is difficult to prove that an individual has actually completed the course therefore the legislation would have to require demonstration of knowledge not just training attendance.</p>

32. Do you think the scale of proposed training fees is reasonable?

Yes

No

If not, what are reasonable fees?



Without knowing the details of the proposed training it is difficult to determine if the fee is reasonable. In addition, if the fee is per premise there may be an option for companies with multiple premises to combine training courses. This would affect the estimated revenue generation. In addition, the revenue estimates in table 4b appear to include annual training fees for each premise when the proposal under paragraph 157 state that operators should undertake training every two years.

### *Exclusion of certain persons from service*

33. Do you support the proposed list of people who should be strongly discouraged from using sunbed services provided by licensed operators?

- Yes  
 No

If not, why not?

We support the list of people who should be strongly discouraged, however, we do not believe it is appropriate for lay people to ask for details of medications or make any kind of assessment related to medication. People should be given the information on photosensitising medications and advised to contact their doctor if they have any concerns. This would also reduce the risk of breaches under the Privacy Act as sunbed operators would not hold any information on personal health or medication.

Do you prefer another approach?

- Yes  
 No

34. It is currently proposed that people with skin type I and skin type II should be strongly discouraged from accessing sunbed services and hired sunbeds. Do you support this?

- Yes  
 No

If yes, what suggestions do you have for supporting compliance with this requirement?

Use of informed consent and training for operators around the use of informed consent.

### *Mandatory operational requirements*

35. Which proposed operational practices outlined in the consultation document do you support or oppose? Why/why not?

Proposed operational practices you support	Reasons
Training for operators.	So operators understand their responsibilities and how to meet the standard AS/NZS 2635:2008 and can provide advice to clients.
Client assessment.	To support harm minimisation: clients can be given advice on skin type and given information on which people would be strongly discouraged from using sunbeds and advising that those on photosensitising medication should consult a doctor before using a sunbed.
The keeping of records of consent forms, client records and complaints.	To demonstrate compliance and facilitate audits, and support investigation of complaints or concerns.
The use of timers.	To support harm minimisation: to ensure that the maximum dose is known, ensure control over the dose individuals receive and reduce the risk of human error.
Single person sunbed enclosures.	We note that this minimises the risk of inadvertent exposure to other members of the public. In addition, this should also address the concerns about staff exposure.
Ensuring sunbeds are cleaned and sanitised between each use.	Managing potential infection control issues: good hygiene is essential especially as the skin is in direct contact with sunbed.
Prohibition of health claims.	Allowing health claims will weaken public health warnings and/or mislead clients.
Compulsory display of warning notices.	This is easy to do, easy to audit and ensures that information is available at all times. This also supports informed consent.
Setting standards with regard to the installation, maintenance and repair of sunbeds.	Enforcement officers do not necessarily have the technical knowledge about sunbeds to determine if a sunbed is safe.
The requirement to keep records regarding the servicing and repair of sunbeds.	Requiring records to be kept regarding the machine and its service history will help in this regard.
The requirement to keep records on the sale of sunbeds.	This will help identify new operators and ensure that suitable advice can be provided to private buyers.
Ensuring that all sunbeds manufactured in NZ or imported meet the standard AS/NZS 2635:2008.	Should decrease the likelihood of higher risk sunbeds (e.g. lower standard or older models) being introduced to the market.

Proposed operational practices you oppose	Reasons
Exclusion of people on photosensitive medication.	We have some concerns around the ability of operators to have the necessary knowledge to assess this. In addition, there is also potential privacy of health information concerns. We suggest that clients on medications should be requested to consult with a doctor. Operators could be provided with a generic list of photosensitive medications. However, this will not be sufficient to accurately identify all clients who should be advised against using sunbeds because of concomitant use of photosensitising medications.
Incident reporting within 14 days.	There should be a much shorter reporting timeframe for serious incidents, facilitated by permitting telephone reporting. This could then be followed by a written report within 14 days.

36. Are there other controls that you believe should apply?

Yes

No

What are they and who would be subject to these controls?

Other controls you believe should apply	Who would be subject to these controls

## Implementation of regulations

37. Which agencies should be responsible for monitoring and ensuring compliance with the regulations: public health units or territorial authorities?

Public health units

Territorial authorities

Why?

Public health units (PHUs) have the knowledge, experience and working relationships with solariums in their region. The concern for PHUs in undertaking this work is having sufficient workforce and funding to increase current workloads. Cost recovery will need to be sufficient to cover all aspects of implementing a new regulatory regime (training, licensing, monitoring and compliance).

There is also no mention in the consultation of the role of WorkSafe NZ with regard to these premises or the duties of operators under the Health and Safety at Work Act 2015. The roles and responsibilities of both PHUs and Worksafe inspectors would need to be clarified.

38. Are the proposed transition periods reasonable to allow businesses and operators to ensure compliance with the regulations?

Yes

No

If not, what transition periods would be appropriate?

The availability of appropriate training courses is however crucial to successful timely licensing.

39. Please detail below any other support needs for businesses that we have not set out in the consultation document.

### Alternative policy options

40. This consultation document proposes the implementation of option 3 (regulations introducing licensing and mandatory operational practices). However, please indicate if you would support one or more of the following options instead, and if so, why:

- option 1: maintain the status quo – voluntary compliance
- option 2: active campaign to discourage the use of sunbeds
- option 4: ban the provision of commercial sunbeds
- option 5: ban the importation, manufacture, sale and rental of sunbeds for commercial, and possibly private, use.

Other option(s) you would support			Reason
	Yes	No	
Option 1: maintain the status quo – voluntary compliance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Option 2: active campaign to discourage the use of sunbeds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	This should be also done in conjunction with the licensing proposals (Option 3).
Option 4: ban the provision of commercial sunbeds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	This would achieve the health goals and remove the need for licensing, training and on going monitoring. Regional Public Health supports a goal of moving towards this as the preferred option for the future to best meet the policy objectives and reduce harm to health.
Option 5: ban the importation, manufacture, sale and rental of sunbeds for commercial, and possibly private, use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	This would seem a logical step if the provision of commercial sunbeds has been banned. There are no figures provided for the numbers of sunbeds imported for private use so it is difficult to know if a ban is worthwhile or how this could practically be achieved.

41. If you do not support the proposals set out in this paper, or the other options considered by the Ministry, what approach would you support instead?

## Infringement notices

42. Do you support the proposed infringement notice penalty of \$250 for an individual and \$500 for a body corporate?

Yes

No

Why/why not?

There appears to be a mismatch between the costs incurred for a licence and the fine. This may mean that some operators are prepared to risk a fine rather than pay the licensing and training fee of \$1858.

43. If you do not support the proposed infringement notice penalty, what would you propose instead?

The fines recommended under The Health (Protection) Amendment Bill 2014 of up to \$2000 for individuals and up to \$10,000 for a body corporate seem more appropriate.

## Impacts

44. Please detail below any other impacts, positive or negative, that are not listed in the consultation document. Who do they affect?

Other impacts	Who do they affect?

**For businesses**

45. What impacts would the proposed regulations (option 3) have on your business? Please provide estimates, in \$NZD, of the following costs, and any other impacts:

- costs of complying with licensing (time taken to learn about requirements, apply for licences for both the premises and operators, etc)
- establishment costs of complying with the mandatory operational practices (cost of learning what is required, developing forms, establishing record-keeping systems, changing practices, signage, etc)
- ongoing costs of ensuring compliance with the mandatory operational practices (this may be monetary costs, increased employment costs, etc)
- effects on the number of staff in your business
- costs of all operators requiring training
- any other costs or impacts.

Impacts of proposed regulations	Estimate of costs	Other impacts
Costs of complying with licensing		
Establishment costs of complying with the mandatory operational practices		
Ongoing costs of ensuring compliance with the mandatory operational practices		
Effects on the number of staff in your business		
Costs of all operators requiring training		
Any other costs or impacts		

46. What would the costs be if any of the other options were considered (ie, options 1, 2, 4 or 5)? Please provide an estimate of financial costs, impacts on employment, time taken to comply, etc. However, if it is not possible to provide such detail, please provide a statement on how costly it would be, and what impacts would otherwise occur, for each option, *relative to the preferred option* (option 3).

Other option(s)	Impacts
Option 1: maintain the status quo – voluntary compliance	
Option 2: active campaign to discourage the use of sunbeds	
Option 4: ban the provision of commercial sunbeds	
Option 5: ban the importation, manufacture, sale and rental of sunbeds for commercial, and possibly private, use	

### **For users of sunbeds**

47. What impacts do you think the proposed regulations would have on you?

48. If, instead of the controls proposed in the consultation document, there was a total ban on the provision of sunbed services, what would your response be?

### **Implementation, monitoring, evaluation and review**

49. Are there any other areas of implementation, monitoring, evaluation or review that the Ministry needs to consider?

### **Other comments**

If you wish to provide additional information, you are welcome to include this with your submission.

### **Overall Comments**

Thank you for the opportunity to comment on this consultation document. We have used this section to reinforce key pieces of feedback that we have provided in the submission framework. One of these areas is the financial implications of implementing this proposed licensing regime. There has been a need to rely on information from Australia without being able to look at costings for sunbed use within the New Zealand economy. This is a gap for assessing the cost benefit analysis of the proposed regime within New Zealand. While licensing may be desirable it is possible that such an approach is not the best value for money intervention. It will be important to consider what impact funding this work will have on existing cost effective public health work, before deciding to implement this regime.

More specifically we have raised that the cost of the licence seems disproportionate both to the overall health risk and to the fines for non-compliance, which are significantly lower than the cost of a licence. Another issue we have noted is there are no details on how the agency responsible for licensing is to be funded. And finally, there does not appear to be any details of the costs involved in actually drafting and implementing new legislation.

Finally, we would like to reinforce that these businesses are workplaces and there needs to be consideration of the role of WorkSafe NZ in relation to these premises. The document does not contain any specific reference to Worksafe NZ and any roles and responsibilities.

### **Specific Comments on Document Content:**

- There appears to be a typo on paragraph 146 which states that regulations would need to be made under 117(1)(rb) of the Health Act.
- The Estimated Revenues in Table 4b indicate that cost of developing and delivering a training programme will be met by delivering and charging for 72 training sessions per annum. Paragraph 157 however states that licenced operators would need to undertake training every two years, not annually.