



New South Wales

Radiation Control Amendment (Tanning Units) Regulation 2009

under the

Radiation Control Act 1990

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Radiation Control Act 1990*.

CARMEL TEBBUTT, MP
Minister for Climate Change and the Environment

Explanatory note

The object of this Regulation is to regulate tanning units and solaria used to provide a tanning service in New South Wales. The requirements contained in the Regulation are generally in line with AS/NZS 2635:2008, *Solaria for cosmetic purposes*. In particular, the Regulation makes provision for or with respect to the following:

- (a) prohibiting exposure of persons under 18 years to ultraviolet radiation from tanning units,
- (b) prohibiting exposure of persons with sensitive skin to ultraviolet radiation from tanning units,
- (c) providing that persons must acknowledge the risks associated with being exposed to ultraviolet radiation from tanning units before being exposed to such radiation,
- (d) limiting the amount and frequency of exposure of persons to ultraviolet radiation from tanning units,
- (e) providing for certain safety measures to be followed in respect of exposure to ultraviolet radiation from tanning units, including the wearing of protective eyewear, appropriate training for operators, supervision of clients, proper operation of tanning units and the display of warning signs,
- (f) imposing other requirements on tanning unit operators and persons who carry on solarium businesses.

This Regulation is made under the *Radiation Control Act 1990*, including section 40 (the general regulation-making power).

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Clause 1 Radiation Control Amendment (Tanning Units) Regulation 2009

Radiation Control Amendment (Tanning Units) Regulation 2009

under the

Radiation Control Act 1990

1 Name of Regulation

This Regulation is the *Radiation Control Amendment (Tanning Units) Regulation 2009*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Radiation Control Regulation 2003

[1] Part 4A

Insert after Part 4:

Part 4A Tanning units

30A Definitions

(1) In this Part:

AS/NZS 2635:2008 means the Australian and New Zealand Standard entitled AS/NZS 2635:2008, *Solaria for cosmetic purposes*, as in force from time to time, published jointly by Standards Australia and Standards New Zealand.

Fitzpatrick Skin Photo Type classification system means a system for the classification of skin photo types, as referred to in AS/NZS 2635:2008.

operator, in relation to a tanning unit, means a person who operates or activates a tanning unit at a solaria business.

solaria business 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.

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

tanning unit means an electrically powered apparatus intended to produce tanning of human skin by exposure of the skin to ultraviolet radiation emitted by the apparatus.

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

(2) In this Part, a reference to a particular Skin Photo Type is a reference to that Skin Photo Type determined in accordance with the Fitzpatrick Skin Photo Type classification system.

30B Application of Part

This Part applies only in relation to a tanning unit and a solaria business used to provide a tanning service for fee or reward or used in connection with another service that is provided for fee or reward.

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30C Prohibition on exposure of certain persons to radiation from tanning units

- (1) The operator of a tanning unit must not expose a person to ultraviolet radiation from the unit unless:
 - (a) the operator has assessed the person's skin type in accordance with the Fitzpatrick Skin Photo Type classification system, or
 - (b) the person has provided the operator 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) The operator of a tanning unit must not expose a person to ultraviolet radiation from the unit if:
 - (a) the person is under the age of 18 years, or
 - (b) the person's skin type is Skin Photo Type I.Maximum penalty: 100 penalty units.

30D Prohibition on exposure of persons to radiation from tanning units without written consent

- (1) The operator of a tanning unit must not expose a person to ultraviolet radiation from the unit unless:
 - (a) the person has completed a consent form in the form set out in Schedule 6, and
 - (b) the operator has ensured that the person has been given a reasonable time to read the consent form, and
 - (c) the operator has taken reasonable steps to satisfy himself or herself that the person understands the information in the consent form.Maximum penalty: 100 penalty units.
- (2) A consent form is not valid for the purposes of subclause (1) unless it relates only to exposure to ultraviolet radiation on the particular occasion concerned.

30E Limits on exposure to radiation from tanning units

- (1) The operator of a tanning unit must not expose a person to more than 0.9 MED for that person's skin type from the unit on any single occasion.
Maximum penalty: 50 penalty units.

- (2) For the purposes of this clause, **MED (minimum erythema dose)**, for a particular skin type specified in Column 1 of the Table to this clause, means the amount of ultraviolet radiation specified for that skin type in Column 2 of the Table to this clause.

Table

Column 1	Column 2
Skin type	MED
Skin Photo Type II	250J/m ²
Skin Photo Type III	300J/m ²
Skin Photo Type IV	450J/m ²
Skin Photo Type V	600J/m ²
Skin Photo Type VI	1,000J/m ²

Note. An amount listed in Column 2 of the Table is the dose of ultraviolet radiation that may cause a perceptible reddening of the skin for the skin type listed in Column 1 of the Table opposite that amount.

30F Frequency of exposure to radiation from tanning units

- (1) A person who carries on a solarium business must ensure that procedures are in place, and are implemented, to prevent a person from being exposed to ultraviolet radiation from a tanning unit at the business more than once in any 48-hour period.
- (2) The operator of a tanning unit must not expose a person to ultraviolet radiation from the 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 period of 48 hours.

Maximum penalty: 50 penalty units.

30G Persons exposed to radiation from tanning units to wear protective eyewear

The operator of a tanning unit must ensure that a person who is exposed to ultraviolet radiation from the unit is wearing protective eyewear that complies with the requirements set out under AS/NZS 2635:2008 with respect to eye protection.

Maximum penalty: 50 penalty units.

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30H Display of warning notices at solaria businesses

A person who carries on a solaria business must ensure that a warning notice that complies with the requirements specified in clause 3.6.1 of AS/NZS 2635:2008 is displayed in accordance with that clause.

Maximum penalty: 50 penalty units.

30I Training of tanning unit operators

- (1) A person who carries on a solaria business must ensure that any person employed or engaged as an operator of tanning units at the business receives training that covers the following:
 - (a) the safe use and operation of tanning units,
 - (b) the requirements and practical implementation of AS/NZS 2635:2008,
 - (c) the appropriate determination of skin types in accordance with the Fitzpatrick Skin Photo Type classification system,
 - (d) the appropriate determination of exposure times for different skin types from tanning units,
 - (e) the method of screening persons for skin conditions or other conditions that would limit exposure from tanning units,
 - (f) the types and wavelengths of ultraviolet light that are emitted by tanning units,
 - (g) the appropriate procedures for sanitising tanning units, using protective eyewear and using other equipment in connection with tanning units.
- Maximum penalty: 50 penalty units.
- (2) This clause has no operation until 12 months after its commencement.

30J Supervision by operator of tanning unit

A person who carries on a solaria business must ensure that a client of the business is directly supervised by an operator during any period in which the client is using any tanning unit at the business.

Maximum penalty: 50 penalty units.

30K Only one person to use tanning unit at a time

The operator of a tanning unit must ensure that not more than one person is exposed to ultraviolet radiation from the unit at any one time.

Maximum penalty: 25 penalty units.

30L Requirements for persons who carry on solaria businesses

A person who carries on a solaria business must ensure that:

- (a) a tanning unit at the business is not capable of being operated by a client of the business, other than to terminate or suspend a tanning session, and
- (b) there is within the reach of a client using a tanning unit at the business a means by which the client may terminate or suspend a tanning session involving the unit, and
- (c) the operator of a tanning unit at the business is able to terminate a tanning session remotely, and
- (d) a timing device is installed on each tanning unit at the business that can be set to automatically switch off the unit when the maximum amount of exposure to ultraviolet radiation specified under clause 30E for the client concerned 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.

Maximum penalty: 50 penalty units.

30M Requirement to keep records and documents

- (1) A person who carries on a solaria business must keep, or cause to be kept, the following records and documents in accordance with subclause (2) at the premises of the business at which tanning units are operated:
 - (a) a record of each skin type assessment required to be carried out under clause 30C (1) (a),
 - (b) a copy of each certificate provided under clause 30C (1) (b) containing the results of a skin type assessment by a medical practitioner,
 - (c) any written consent forms obtained from clients for the purposes of clause 30D,

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- (d) a record detailing the following for each tanning session conducted at the business:
 - (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 detailing each maintenance or servicing of a tanning unit,
- (f) a record detailing the sale or transfer of each tanning unit operated at the business, including the date on which the unit was sold or transferred and the name and address of the person to whom it was sold or transferred,
- (g) a record detailing the training provided to each person employed or engaged as an operator of tanning units at the business in accordance with clause 30I.

Maximum penalty: 100 penalty units.

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

30N Requirement to keep copy of regulations and Standard

A person who carries on a solarium business must keep a copy of this Regulation and AS/NZS 2635:2008 at the premises of the business at which tanning units are operated, or must enable those instruments to be accessed electronically at the premises (such as by means of the internet).

Maximum penalty: 25 penalty units.

30O Prohibition on claims of health benefits and safety from risk

A person who carries on a solarium business 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) the use of a tanning unit is safe from risk.

Maximum penalty: 50 penalty units.

30P Claims in respect of tanning sessions

A person who carries on a solarium business must not make a representation or claim that would cause a reasonable person to believe that the business 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: 50 penalty units.

30Q Provision of information

- (1) A person who carries on a solarium business must provide to the Director-General, in accordance with this clause, the following information in relation to each premises at which the person carries on the business:

- (a) if the person is a natural person, the name, postal address, telephone number and email address of the person,
- (b) if the person is a corporation, the name, postal address, telephone number and email address of a nominated director or officer of the corporation,
- (c) the address of the premises of the business at which tanning services are provided by the business,
- (d) the number of tanning units used at those premises,
- (e) the type of each tanning unit used at those premises.

Maximum penalty: 50 penalty units.

- (2) The information must be provided in writing:

- (a) in the case of a person carrying on the solarium business concerned immediately before the commencement of this clause—no later than 6 months after that commencement, or
- (b) in relation to a person who commences to carry on the solarium business concerned on or after the commencement of this clause—no later than 2 months after the person commences to carry on the business.

- (3) A person who carries on a solarium business must, within 30 days after any change occurring in the information required to be provided under this clause, notify the Director-General in writing of the change.

Maximum penalty: 50 penalty units.

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[2] Schedule 4 Penalty notice offences

Insert in appropriate order under the heading “**Offences under this Regulation**” in Columns 1 and 2, respectively:

Clause 30C (1) and (2)	\$1000
Clause 30D (1)	\$1000
Clause 30E (1)	\$500
Clause 30F (1) and (2)	\$500
Clause 30G	\$500
Clause 30H	\$500
Clause 30I (1)	\$500
Clause 30J	\$500
Clause 30K	\$250
Clause 30L	\$500
Clause 30M (1)	\$1000
Clause 30N	\$250
Clause 30O	\$500
Clause 30P	\$500
Clause 30Q (1) and (3)	\$500

[3] Schedule 6

Insert after Schedule 5:

Schedule 6 Consent form

(Clause 30D)

Client consent form

Please read the following information carefully

- (1) Tanning units emit ultraviolet radiation.
- (2) Exposure to ultraviolet radiation such as from a tanning unit contributes to the skin ageing process and skin cancer.
- (3) Intentional tanning unit exposure should be avoided for 48 hours before and after sunlight or tanning unit exposure.
- (4) Protective eyewear must be worn at all times while undergoing tanning unit exposure.

- (5) If you have fair skin and burn easily you will not be permitted to use a tanning unit.
- (6) If you are under the age of 18 years you will not be permitted to use a tanning unit.
- (7) There is additional risk, and tanning unit exposure is not recommended, if you:
 - (a) have ever been treated for solar keratoses or skin cancer, or
 - (b) have a large number of moles, freckles or naevi, or
 - (c) have a history of frequent childhood sunburn, or
 - (d) burn easily, or
 - (e) have ever suffered from an abnormal reaction, or allergy, to light.
- (8) There may be further risk if you are pregnant, taking certain medications by mouth or applying medications or certain cosmetics to the skin.

If there is any doubt in your mind in relation to any of the particulars described in items (3), (7) or (8) above, consult your doctor before undergoing any ultraviolet exposure.

Consent

- (1) I, [*Name*], of [*Address*], am over the age of 18 years.
- (2) I acknowledge that I have read and fully understand the above information.
- (3) I consent to being exposed to ultraviolet radiation from a tanning unit in this establishment.
- (4) I have not been exposed to ultraviolet radiation from a tanning unit in the last 48 hours.

.....
Signed (client)

.....
Date

.....
Signed (operator)

.....
Date

.....
Name of establishment