

Radiation Control Amendment (Tanning Units) Regulation 2009: Follow-up inspection report



Disclaimer

DECCW has prepared this report in good faith, exercising all due care and attention, but no representation or warranty, express or implied, is made as to the relevance, accuracy, completeness or fitness for purpose of this report in respect of any particular user's circumstances. DECCW accepts no responsibility for any loss or damage resulting from the application of the report.

This material may be reproduced for educational or non-commercial purposes, in whole or in part, provided the meaning is unchanged and the source is acknowledged.

Cover photo: C. Lamberton, DECCW

© 2010 State of NSW and Department of Environment, Climate Change and Water

Published by:

Department of Environment, Climate Change and Water

59 Goulburn Street, Sydney

PO Box A290, Sydney South 1232

Ph: (02) 9995 5000 (switchboard)

Ph: 131 555 (environment information and publications requests)

Fax: (02) 9995 5999

TTY: (02) 9211 4723

Email: info@environment.nsw.gov.au

Website: www.environment.nsw.gov.au

DECCW 2010/310

ISBN 978 1 74232 626 9

May 2010

Contents

| | |
|---|---|
| Executive summary | 1 |
| 1. Background | 2 |
| 2. Regulatory framework | 2 |
| 3. Project objectives | 4 |
| 4. Location of businesses inspected | 4 |
| 5. Project evaluation | 4 |
| 6. Key outcomes and achievements | 5 |
| 7. Further action | 5 |
| 8. Conclusion..... | 6 |

Executive summary

Concerns about the health risks associated with the misuse of commercial tanning units for cosmetic purposes have driven calls for a national regulatory approach.

In the past, commercial tanning units were unregulated, with the voluntary Australian/New Zealand Standard *AS/NZS 2635:2008 Solaria for cosmetic purposes* (Standards Australia 2009) providing guidance on safety, maintenance and operational issues. Studies in 2003 and 2006 indicated that industry compliance with the Standard was low.

Since 2008, Australian states have progressively introduced regulations consistent with the Australian Standard. The NSW Radiation Control Amendment (Tanning Units) Regulation commenced on 29 May 2009 and imposes controls on businesses that operate tanning units.

'Operation Icarus', undertaken on 30 September and 1 October 2009 by the Department of Environment, Climate Change and Water (DECCW), comprised an audit of all known businesses with tanning units in the Sydney Metropolitan Area. Its aim was to educate industry about the new requirements, assess the current level of compliance and establish a profile for regulation of commercial tanning units by DECCW.

'Operation Aurora', undertaken by DECCW between 25 February and 2 March 2010, involved re-inspections of businesses with tanning units in the Sydney Metropolitan Area. Its aim was to determine whether compliance with the Regulation had improved since Operation Icarus and to take regulatory action, where required.

The inspections revealed that most operators had substantially improved their compliance since the previous audit and introduced new systems and procedures. However, in some instances these revised systems and procedures were not operating effectively. As a result, a number of penalty notices were issued, mainly for failure to obtain proper consent, perform skin assessments and maintain proper records, and allowing clients to use a tanning unit more frequently than permitted. A number of formal warning letters were also issued for less serious non-compliance.

DECCW has been actively identifying tanning businesses that have failed to register with it, as required by the Regulation. Armed with a list of registered tanning unit businesses, staff participating in the campaigns have identified several additional solarium businesses in the course of their personal travels or when conducting other field duties. DECCW also maintains a capacity for public reporting on solarium operations through its Environment Line inquiry and information service.

1. Background

The issue

In recent years, there has been increased evidence about the link between skin cancer and the ultraviolet (UV) radiation emitted by cosmetic tanning units.

Tanning units emit ultraviolet radiation in the form of UVA and UVB. UVA penetrates the skin more deeply than UVB and can play a part in skin damage in areas of the epidermis (outermost skin layer) where most skin cancers occur.

UVB is the primary cause of skin reddening and sunburn and tends to damage the skin's more superficial epidermal layers. It also plays a key role in the development of skin cancer and its intensity varies by season, location and time of day.

The evidence

Recent studies have found that individuals who use solarium have a 22 percent higher risk of developing melanoma compared with those who have never used them. The risk is elevated to 98 percent for people who first use solarium under the age of 35.

Recently the World Health Organisation (WHO) concluded that all types of UV radiation induce cancer not just UVB which has been implicated in the past. Previously, the UVA tanning units were thought to be safer but studies have shown this is not the case.

In two surveys of the cosmetic tanning industry in 2003 and 2006, NSW Health and the Centre for Health Research and Psycho-oncology found that voluntary compliance with the Australian/New Zealand Standard *AS/NZS 2635:2008 Solarium for cosmetic purposes* was quite low.

The solution

These research findings and high-profile cases of melanoma thought to be linked to the use of solarium prompted the states and territories to work to develop a common approach to regulate the industry, coordinated through the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

Consistent with the national approach and following a public consultation process, the Radiation Control Amendment (Tanning Units) Regulation was made under the *Radiation Control Act 1990* and came into force in New South Wales on 29 May 2009.

Regulation of solarium businesses have now been adopted in NSW, Victoria, Queensland, South Australia and Tasmania. The statutory requirements are consistent with the Australian/New Zealand Standard *AS/NZS 2635:2008 Solarium for cosmetic purposes*.

2. Regulatory framework

The NSW Regulation specifies performance requirements for those who operate solarium businesses and registration with DECCW including details of the ownership and location of solarium. This ensures that DECCW has up-to-date details so it can issue educational materials and inform businesses about its regulatory activities such as compliance audits and enforcement. This approach:

- avoids unnecessary red tape for small business

- avoids diverting DECCW resources into paperwork at the expense of compliance activities
- avoids a perception that solariums are 'endorsed' by the Government
- establishes a cost-effective model for potential expansion into other forms of low-risk non-ionising radiation, should this be required.

The main requirements of the Regulation are:

- clients must be 18 years or over and not have fair (type 1) skin
- operators must assess the skin type of potential clients before they can use a tanning unit
- operators must be appropriately trained from 29 May 2010
- clients must complete consent forms
- operators must restrict the exposure of clients to UV radiation according to their skin type
- operators must restrict the frequency of client exposure to no more than once every 48 hours
- operators must ensure clients wear protective eyewear
- sessions must be supervised by a trained operator
- warning notices must be displayed
- records must be kept including consent forms, skin assessments and details of tanning sessions, operator training, maintenance and sale of tanning units
- no claims or representations may be made –
about non-cosmetic health benefits
that tanning units are risk-free
that tanning sessions can be provided more frequently or at a higher ultraviolet exposure than allowed under the Regulation
- operators of solarium businesses must register with DECCW, providing their contact details and the number and type of tanning units used.

In May 2009, DECCW wrote to all businesses in NSW listed in the *Yellow Pages* as offering tanning services. The letter outlined the main regulatory requirements and included a notification form to be completed and sent back to DECCW.

Advertisements were placed in *The Sydney Morning Herald* and *The Daily Telegraph* on 3 June 2009 and advertorials in three major industry magazines: *The Australian Hairdressers Journal*, *Fitness Network* and *Professional Beauty Magazine*.

In addition, the Health and Fitness Industry Association and the Hair and Beauty Industry Association published information about the Regulation in their newsletter and industry bulletin, both of which are emailed out to all members in NSW.

Operation Icarus

'Operation Icarus', on 30 September and 1 October 2009, was the first audit and inspection campaign of commercial tanning units undertaken across the Sydney Metropolitan Area following commencement of the Regulation. Fifteen two-member teams of DECCW staff inspected 89 premises across the city. Some premises, which were unable to be inspected or were subsequently identified, were inspected in November and December 2009.

Operation Icarus found that many solarium businesses had a poor level of compliance with many of the requirements of the Regulation. The main problems identified were:

- exposure times not set in accordance with skin type
- the use of eye protection not consistent with the Australian Standard
- lack of supervision of tanning sessions
- skin assessments not in accordance with the Fitzpatrick Skin Photo Type Classification System or not being carried out at all
- warning notices based on out-of-date information
- incomplete record-keeping in relation to tanning sessions and consent forms.

3. Project objectives

'Operation Aurora', between 25 February and 2 March 2010, involved DECCW staff conducting follow-up compliance inspections of 73 solarium businesses across the Sydney Metropolitan Area.

Operation Aurora aimed to identify areas of improvement since the previous operation at the end of 2009 and where further clarification was needed and to take regulatory action to ensure future compliance.

4. Location of businesses inspected

| | |
|--------------------------|---|
| Sydney East | Bondi, Bondi Junction, Coogee, Randwick, Maroubra |
| Sydney City | City, Darlinghurst, Kings Cross |
| Inner West to Parramatta | Newtown, Marrickville, Stanmore, Rozelle, Glebe, Leichhardt, Waterloo, Burwood, Bankstown, Auburn, Strathfield, North Strathfield, Parramatta, Greystanes |
| Sydney South | Cronulla, Woolooware, Jannali, Miranda, Sylvania, Engadine, Panania, Lugarno, Carlton, Rockdale, Hurstville, Kogarah, Roselands |
| Sydney Northern Beaches | Manly, Dee Why, Collaroy, Manly Vale, Belrose, Avalon Beach |
| Sydney North | Chatswood, Mosman, St Leonards, North Sydney, Willoughby, Crows Nest |
| Sydney North-west | Richmond, Castle Hill, Bella Vista, Baulkham Hills, Carlingford, North Ryde |
| Sydney Outer West | Penrith, Cranebrook, Blacktown, Campbelltown, Glenbrook |

5. Project evaluation

Operation Aurora found that the level of compliance of solarium businesses with the Regulation had improved markedly since the previous inspections. This suggests that the education campaign and the previous inspection campaign were successful in improving business understanding of regulatory requirements.

Some businesses that offer tanning as a sideline to their main business (such as beauty salons, hairdressers and gyms) are finding implementing new procedures and practices to meet the Regulation more challenging. A number of these have removed tanning units from their premises or have indicated that they intend to phase them out. DECCW found that three businesses had closed while another six no longer offer tanning since Operation Icarus.

Tanning units are usually represented at the Sydney International Spa and Beauty Expo at Darling Harbour but did not attend the 2009 event. There is anecdotal evidence from solaria business operators that public demand is also down.

6. Key outcomes and achievements

The regulatory approach adopted has achieved a number of outcomes.

Enforcement

- Following Operation Aurora, 13 solaria businesses have been issued with penalty notices. Six of these received \$1000 penalty notices for failure to have client consent, perform skin assessments or keep complete records, including consents, skin assessments and tanning session records. Another seven businesses were issued with \$500 penalty notices for allowing customers to use a tanning unit more than once in 48 hours.
- Eighteen solaria businesses received warning letters for shortcomings in their operations, such as using non-complying or out-of-date consent forms, not performing skin assessments in the prescribed manner (the Fitzpatrick system), and incomplete records of tanning sessions. These warning letters require the businesses to correct the non-compliances and report the action taken in writing to DECCW within 28 days of the date of the letter.
- One business is still being investigated.

Identification of previously unregistered solaria

Steps have been taken to identify previously unknown businesses. The list of known tanning unit businesses at 5 March 2010 was circulated to staff participating in Operation Aurora. As a result, three businesses who had not registered with DECCW were identified. Inspections will be carried out to assess their compliance.

7. Further action

Regional campaign

The next phase of the regulatory campaign is to audit the operations of solaria in regional NSW.

Additional inspections

As new businesses operating tanning units are identified across NSW, they will be contacted and inspected. DECCW will prioritise non-complying businesses in the metropolitan area for future inspections.

Online training

DECCW is liaising with ARPANSA about finalising an online training package for solarium operators and will advise businesses when it becomes available.

8. Conclusion

The 2010 regulatory campaign found that the industry had substantially improved its compliance levels with solarium operators putting in place systems and procedures to comply with the legislation.

In some cases, however, the revised systems and procedures were not operating effectively. As a result:

- 13 solarium businesses have been issued penalty notices
- of the 13 businesses, six were issued with \$1000 penalty notices and seven with \$500 penalty notices
- a further 18 solarium businesses received warning letters for shortcomings in their operations.
- one business is still under investigation.

The remaining 41 solarium businesses inspected were essentially meeting their obligations under the legislation, with only a few minor matters, such as incorrectly placed signs, needing to be addressed.