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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](mailto: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?

While the Problem Definition outlined in the consultation document refers to a significant body of evidence establishing the harms of sunbeds, more recent publications add even further weight to these harms. Examples are provided in MelNet's response to question 40 below.

### Policy objective

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

Yes

No

Why / why not?

MelNet accepts but does not fully support the *objective* of the policy proposal set out in the consultation document, which is "to reduce the risks of harm to the public from commercial sunbeds" (see 22 below). MelNet supports the four *criteria* by which the options are to be assessed. However, MelNet does not support the conclusion that the proposed policy of regulation best meets these criteria.

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?

In light of the unequivocal link of sunbeds to melanoma, the high incidence of melanoma in New Zealand and the fact that exposure to artificial UV radiation from indoor tanning is a completely avoidable risk factor, MelNet supports the objective of *eliminating* the risks of harm to the public from commercial sunbeds.

# 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?

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

Yes

No

Why/why not?

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?

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?

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?

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

Approach(es) to training you would support	Reasons

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

Yes

No

If not, what are reasonable fees?

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### 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?

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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?

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*Mandatory operational requirements*

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

<b>Proposed operational practices you support</b>	<b>Reasons</b>
<b>Proposed operational practices you oppose</b>	<b>Reasons</b>

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

Yes

No

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

<b>Other controls you believe should apply</b>	<b>Who would be subject to these controls</b>

## 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?

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?

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"/>	As demonstrated in findings of all mystery shopper surveys to date, an unacceptable proportion of sunbed operators in New Zealand continue to demonstrate non-compliance with the voluntary standards.
Option 2: active campaign to discourage the use of sunbeds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is limited evidence of the effectiveness of such campaigns.
Option 4: ban the provision of commercial sunbeds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See rationale under “Other Comments” below
Option 5: ban the importation, manufacture, sale and rental of sunbeds for commercial, and possibly private, use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See rationale under “Other Comments” below

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?

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

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## 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	Currently, as in recent years, Government expends very limited funds on skin cancer prevention in New Zealand. Hence <i>no</i> comprehensive ‘campaigns’ comparable to those in Australia to discourage outdoor sun exposure have been possible. In MelNet’s view, the cost of an active campaign to discourage the use of sunbeds could not be justified – especially as indoor tanning (unlike outdoor sun exposure) is a completely avoidable risk factor.
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	
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### **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.

MelNet congratulates the Minister of Health and his Ministry for recognising the need to protect consumers of all ages from the established dangers of sunbeds, particularly in light of their unequivocal link to melanoma.

MelNet acknowledges that the proposal to regulate solaria and sunbed hire businesses is consistent with MelNet's position in early 2015, as outlined in its **submission** to the Health Select Committee on the The Health (Protection) Amendment Bill. This position is cited in the consultation documentation.

MelNet's 2015 submission to the Health Select Committee also identified the need for nation-wide regulation for other UV emitting devices with an associated risk of burn, such as the use of pulsed light and laser devices, due to associated high risks of harm to consumers. This issue remains of serious concern to Melnet. MelNet congratulated the Auckland Council for having included such devices in its Health and Hygiene Bylaw and Code of Practice 2013. MelNet notes that the Council recommended comparable provisions in their submission to the Health Select Committee.

Although not cited in the Ministry of Health's consultation documentation, MelNet also recommended that consideration be given to a total ban of artificial tanning services in New Zealand, based upon the results of a 2015 survey of MelNet members.

Sunbed-related developments since MelNet's 2015 submission to the Select Committee include:

- The implementation of the Auckland Council Health and Hygiene Bylaw and Code of Practice 2013 with regards to sunbeds (affecting roughly one-third of the New Zealand population);
- Implementation of a total ban of sunbeds in all states in Australia;
- Findings of the 2015 Public Health Unit visits to commercial solaria in their regions, which found a 'considerable decrease' in the number of operators in New Zealand;
- Results of a Consumer NZ survey undertaken in late 2015, which show a decrease in operator compliance with guidelines regarding consent forms, skin assessment and eye protection;
- The publication of ever-strengthening evidence of sunbed harms, including the DNA damage resulting from even short exposure to UV and that the cancer-causing mutations in skin cells continue to be generated for hours after UV exposure.

Further details of these developments are outlined below.

## **The Auckland Experience**

MelNet views developments in the Auckland region as a significant incremental step in achieving a total ban of solaria and sunbed hire services in New Zealand.

As experienced in Australia, regulation and licensing in the Auckland region has resulted in a significant decrease in the number of operators and the diversifying of others into other revenue streams, such as spray tanning (**Sinclair, CA, et al. The Role of Public Health Advocacy in Achieving an Outright Ban on Commercial Tanning Beds in Australia. Am J Public Health; [Auckland Council submission to the Health Select Committee](#)**).

According to the 2015 **report** of the PHU visits, the number of establishments in the Auckland area decreased from 41 to 28. Both the 2014 and 2015 visits occurred between 1 February and

31 July. Such a decrease in number of sunbeds and diversification of businesses suggests that a total ban would not have a significant impact on the relatively small number of businesses throughout New Zealand for which sunbeds are their core service.

### **The Australian Experience**

The move to a ban in New South Wales, followed by comparable bans in all other states (with the exception of the Northern Territory where there are no sunbed operators), was based upon audits showing poor levels of compliance with industry regulations and the strength of the evidence demonstrating a causal link between sunbed use and melanoma (**Sinclair, CA, et al**). Such a ban was considered a “logical step”, not only because of these factors but also because it would affect a relatively small number of operators. “Tanning bed use was never as common in Australia as in North America and Europe”, and surveys showed a decrease in their use, according to surveys between 2003-2004 and 20-06-2007. Also, as indicated above, in Auckland the number of operators decreased because of having to adhere to regulations.

New Zealand’s experience is likely to be comparable to that of Australia. According to Sinclair et al, “due to heightened public awareness of the risks of tanning beds, the number of operators quickly diminishing and those remaining quickly diversifying their businesses into other revenue streams such as spray tanning, it is likely that state governments saw little potential public or industry opposition to an outright ban”.

The Australian state bans do not affect exposure to UV radiation for medical purposes because they are specific to commercial sunbeds for cosmetic purposes. In some states commercial sunbed operators have been given some financial compensation per machine ahead of the sunbed ban.

A recent Australian study has found a high level of public support for the solarium ban, even among those who had used a solarium at some point in their life. (**Prichard, I, et al. Perceptions of the solarium ban in Australia: ‘Fake it, don’t bake it’. Health Promotion Journal of Australia 26(2) 154-158** )

### **Consumer NZ Survey**

For their most recent mystery shopper **survey** published in early February 2016, Consumer NZ visited 68 sunbed operators to check compliance with the Australian/New Zealand standard. They also sent underage shoppers and people with fair skin to 36 operators.

According to the survey, eight of 16 operators turned fair-skinned shoppers away. The sunbed standard recommends people with type 1 skin should not use a sunbed. Three operators also allowed an underage shopper to have a sunbed session.

According to Consumer NZ, operators generally find it difficult to differentiate between people with skin type 1 or skin type 2. As cited in their February 2016 report, “Waikato District Health Board dermatology department Professor Marius Rademaker says a problem with skin-type questionnaires [such as the Ministry of Health’s current questionnaire] is that the answers are always subjective”. He advises that “looking at a person’s skin is not a particularly good way of discriminating between skin type 1 and 2, and studies have shown there are limitations to using patient-reported appearance to predict individual risk”.

MelNet concurs with Professor Rademaker’s views. In essence, it is unrealistic to expect sunbed operators to undertake an accurate assessment of skin type, using a questionnaire.



With regard to the main survey, Consumer NZ found that 45 per cent of operators failed to implement basic safety requirements (compared with 40 per cent in their previous survey). Examples include limited warnings in the tanning area, inadequate eye protection, seeking signed consent that is compliant with the standards and the time allowed between sessions (the standard recommends at least 48 hours between sessions). Several operators also continue to display posters claiming benefits, including sunbeds as a source of UVB/vitamin D.

Based upon these findings of poor practices in the industry, Consumer NZ will be supporting a ban in New Zealand.

## **Recent Evidence of Sunbed Harms**

### *Ongoing damage after exposure*

According to a study published in late 2015, DNA photoproducts responsible for cancer-causing mutations in skin cells continue to be generated for hours after sunlight exposure. Mutations in sunlight-induced melanoma arise from cyclobutane pyrimidine dimers (CPDs), DNA photoproducts that are typically created picoseconds after an ultraviolet (UV) photon is absorbed at thymine or cytosine. The researchers found that in melanocytes, CPDs are generated for >3 hours after exposure to UVA, a major component of the radiation in tanning beds. (**Premi, S, et al. Chemiexcitation of melanin derivatives induces DNA photoproducts long after UV exposure. Research Article. Science 20 February 2015: Vol. 347 no. 6224 pp. 842-847. DOI: 10.1126/science.1256022**)

### *Sunbed link with 6-fold increase in melanoma risk in young women*

According to results of a North American study published in late January 2016:

- Sunbeds were strongly associated with increased melanoma risk among women, especially among women younger than 30 years.
- For these younger women, indoor tanning was associated with a 6-fold increase in the likelihood of developing melanoma.
- Nearly all women in the study (96.8%) diagnosed as having melanoma when younger than 30 years had engaged in indoor tanning, all initiating indoor tanning before age 25 years, and nearly all (90.5%) engaging in frequent indoor tanning (>10 times per year). (**Lazovich, D, et al. Association Between Indoor Tanning and Melanoma in Younger Men and Women. JAMA Dermatol. Published online January 27, 2016. doi:10.1001/jamadermatol.2015.2938**)

## **Risks of Reliance Upon Regulation**

Some of the risks associated with a reliance upon regulation, should these be introduced in other parts of the country as they currently exist in Auckland, include the following:

- Regulatory restrictions aimed at reducing consumer risk may lead to the impression that regulated indoor tanning is safe, according to a US **report**. Controlled tanning is not safe tanning.
- According to an Australian study, a sizeable proportion of people surveyed were under the false impression that solariums were safer after regulations were introduced (**Dobbinson, S, et al. Public misperception of new regulations supports a call for a nationwide solarium ban. MJA 198 (7) 364:364**).
- Even with regulations, the solarium industry in Australia failed to comply with age and skin type restrictions (Sinclair, C, et al).

- While regulation is intended to reduce the use of sunbeds by those at highest risk, results of Consumer NZ's latest Mystery Shopper survey show that operators find it difficult to accurately assess skin type.

## Conclusion

1. Based upon the factors outlined above, MelNet supports the following options:
  - 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.
2. A two-part ban, as outlined above, would align well with the Government policy objectives as follows:
  - In light of the ever-strengthening body of evidence of the absence of benefit and strong likelihood of harm, a ban would be risk- and evidence-based, and consistent with good international practice;
  - A ban would protect health and safety while still enabling the use of medical UV devices for the treatment of certain skin conditions under qualified medical supervision in approved medical clinics;
  - A ban would not impose any unnecessary or unjustified compliance costs to operators if it were introduced over a period of time (thereby enabling businesses to diversify);
  - The unequivocal evidence of a link between sunbeds and melanoma, especially among young adults, provides a 'good reason' for such ban.
3. MelNet is of the view that a regulatory approach would be ineffective in addressing the risks associated with mandatory operating practices for sunbed premises and businesses that hire out sunbeds. In MelNet's view, these services should be banned, as should the sale of sunbeds to individuals, for example, as is currently possible through the Trade-me website.
4. If Government adopts the proposed regulatory approach, MelNet would view this decision as only an incremental step towards the ultimate goal of achieving Options 4 and 5.
5. If an interim regulatory approach is adopted, MelNet strongly recommends that the Government should:
  - Ensure that all New Zealanders are offered the same level of protection from harm currently provided in Auckland through the Council's 2013 Health and Hygiene Bylaw and Code of Practice;
  - Work closely with Auckland Council in developing regulation to ensure such level of protection is provided nationwide;
  - Ban self-service sunbeds because they allow access to sunbeds for individuals who may not fully understand their risk of harm.
6. As indicated in its 2015 submission to the Health Select Committee, MelNet also strongly urges the Government to introduce nation-wide regulation for other UV emitting devices with an associated risk of burn, such as the use of pulsed light and laser devices, due to associated high risks of harm to consumers. This issue remains of serious concern to MelNet.
7. Commercial operators of pulsed light and laser devices are currently required to be licensed under the Auckland Council Health and Hygiene Bylaw 2013 and comply with mandatory operational practices. Health practitioners operating in the practice of their profession are exempt. Comparable national-wide regulation should be implemented for these types of commercial services because of their risk of harm.