

Investigation Plan

Project Name	Solaria Enforcement
Objective	Identify and consider enforcement action for non-compliant solarium operators
Project Leader	Sally Gilbert
Team Members	s 9(2)(a) [REDACTED]

Background

The Ministry of Health (the Ministry) is concerned about the promotion and use of sunbeds in New Zealand. Exposure to sunbeds poses a significant risk of skin cancer, as well as risk of burns to skin and eyes, ageing and photosensitivity reactions in the skin. A comprehensive meta-analysis carried out by the World Health Organisation's International Agency for Research on Cancer found that using a tanning device before age 30 increases the risk of melanoma by 75%¹.

In 2012 the Ministry requested Public Health Units (PHUs) to assess sunbed operators against the criteria in AS/NZS 2635:2008 Solaria for Cosmetic purposes (The Standard). The Standard is voluntary and therefore it is not mandatory for solarium operators to comply with it.² Eleven areas were assessed which predominantly covered administrative and procedural aspects of the operation. Two of the procedural aspects require operators to provide clients with a copy of the completed consent form and undertake a skin assessment using the Fitzpatrick Scale. As part of the assessment, operators were reminded that those clients assessed as Skin Type 1 have an increased risk of melanoma and should therefore never use a sunbed³. To date, PHUs have made twelve rounds of visits to commercial solarium in their regions.

The PHUs have also been monitoring false and / or misleading health claims made by sunbed operators. In 2011 the Commerce Commission put 280 sunbed operators and distributors on notice about the consequences of making false or misleading claims regarding the health benefits and risks of sunbed use. The operators were informed that making these types of claims was in breach of the Fair Trading Act 1986. The operators were further informed that

¹ IARC Working Group. *The association of use of sunbeds with cutaneous malignant melanoma and other skin cancers: a systematic review*. Int J Cancer. 2006; 120: 1116-1122

² Refer Standards New Zealand, Wellington

³ Ministry of Health (2018). *Sunbeds*. Retrieved from <https://www.health.govt.nz/your-health/healthy-living/environmental-health/sunbeds>

the Commerce Commission had obtained expert advice from a dermatologist which advised that UV light from a sunbed did not replicate the sun's light, and light from modern sunbeds was not healthier than natural sunlight. In relation to Vitamin D exposure, the dermatologist's advice was that the exact nature of any benefits associated with Vitamin D was unclear and the majority of the population would get enough Vitamin D from incidental exposure from the sun.⁴ The letter concluded, *"There is no evidence that tanning on a sunbed provides natural protection against sunburn. At best it may give a protection of SPF 2 - 3. Furthermore, the Commerce Commission has been advised that tanning on a sunbed does not inhibit incidences of melanoma."* The Commerce Commission advised if false or misleading representations were made, they would consider enforcement options.

In 2012 the Ministry and the Cancer Society published a Consensus Statement on Vitamin D and Sun Exposure in New Zealand. The statement concluded the use of sunbeds and solaria is not recommended because they are associated with increased risk of early-onset melanoma and the risk increases with greater use and an earlier age at first use.⁵

Some local councils (Masterton, South Wairarapa and Auckland) have bylaws which apply to solaria. For example, Auckland City Council's Health and Hygiene Bylaw 2013 requires all operators to have a licence and comply with minimum standards which are outlined in a Code of Practice which is based on the Standard.

From 4 January 2017, it became illegal for sunbed operators to provide a tanning service to a person under the age of 18 years. The Health (Protection) Amendment Act 2016 amended the Health Act 1956 (the Act) by introducing an Infringement Notice scheme which enables enforcement officers to issue Infringement Notices on the spot to any person who has either breached the ban on the provision of sunbed services to persons under 18 years, or breached regulations in relation to sunbed services. As yet, no regulations have been made under the Act.

Non-Compliance

Since 2012 compliance checks have consistently found variable levels of compliance with the Standard. The Ministry's report, *'Visits to commercial solaria by PHUs 1 February – 31 Jul 2018; summary of findings'*, found that 94% of operators would not permit a person under the age of 18 years to their service.⁶ It should be noted these compliance visits were proactive in nature and relied on the information provided by the operators.

⁴ <https://comcom.govt.nz/news-and-media/media-releases/archive/commerce-commission-cautions-sunbed-industry-over-claims>

⁵ <https://www.health.govt.nz/system/files/documents/publications/vitaminsun-exposure.pdf>

⁶ https://15984fd0-a-2903f64b-s-sites.googlegroups.com/a/emfservices.co.nz/emf-services/DHB_solarium_visits_H1_2017.pdf?attachauth=ANoY7cqHFPC28ri_EUZxE0bFngidGKiW4PWPg2aUA36ONDeqI2qjU1NMcwORSH_p8tgjpyTZsl0CDencl5NZk-w_Q3sIMdDN5_PRCoRk-6FUjQFoGr46B4WYUIaPuS-

Since 2015 Consumer New Zealand has carried out surveys on behalf of the Ministry. The surveys have shown poor compliance with the voluntary Code of Practice agreed by the solarium industry. The survey also highlighted poor practices with some operators permitting under 18 year olds and people with fair skin to use a sunbed. The October 2017 survey revealed 45% of operators failed to implement basic checks with two operators (20 checked) permitted a 15-year-old to use the service.⁷

Legislation

Health Act 1956

Part 5 of the Health Act 1956 deals with Artificial UV tanning services and includes the ban on providing artificial UV tanning services to persons under 18 years (section 114) and the infringement offence regime (sections 115 – 116B).

Section 113 is the Interpretation section for Part 5 and reads as follows:

113 Interpretation

In this Part, unless the context otherwise requires,—

approved evidence of age document has the same meaning as in [section 5\(1\)](#) of the Sale and Supply of Alcohol Act 2012

artificial UV tanning services means the provision, for payment or other consideration, of ultraviolet (UV) radiation via sunbeds, sunlamps, or any other device that emits UV radiation. Section 113: replaced, on 4 January 2017, by [section 22](#) of the Health (Protection) Amendment Act 2016 (2016 No 35).

Section 5(1) of the Sale and Supply of Alcohol Act 2012 provides that an approved evidence of age document:

- (a) means a document of a kind approved by regulations made under this Act for the purposes of this definition; and
- (b) in relation to a person, means an evidence of age document relating to the person

Clause 4 of the Sale and Supply of Alcohol Regulations 2013 sets out those documents that are approved evidence of age documents. These are:

- any current passport
- a current New Zealand driver licence
- a Hospitality NZ 18+ card.

Section 114 of the Act outlines the ban on providing artificial UV tanning services to persons under 18 years:

[W3eDurhxaFAfMLjhRQbxO6Ayg05IisAa5CfRx2sapL8EDfKmZm4asK5KpkI5PT8G9q3zkSICkh1tBAGQ6Pv2Nq1bwM1uC0nnHEvjtFqLboRPx5prdmy8qVk%3D&attredirects=0](https://www.consumer.org.nz/articles/sunbeds)

⁷ Refer Consumer NZ. <https://www.consumer.org.nz/articles/sunbeds>

114 Ban on providing artificial UV tanning services to persons under 18 years

- (1) This section applies to owners and operators of premises providing artificial UV tanning services.
- (2) The owner or operator must not provide artificial UV tanning services to a person under the age of 18 years.
- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$2,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.
- (4) Subsection (2) does not apply to a person who provides artificial UV tanning services to a person under the age of 18 years at a hospital if a medical practitioner prescribed the services for the purpose of medical treatment.
- (5) It is a defence to a charge under subsection (2) if the defendant proves that,—
 - (a) before or at the time the artificial UV tanning services were provided, there was produced to the defendant a document purporting to be an approved evidence of age document; and
 - (b) the defendant believed on reasonable grounds that the document—
 - (i) was in fact an approved evidence of age document; and
 - (ii) related to the person to whom the artificial UV tanning services were provided; and
 - (iii) indicated that the person to whom artificial UV tanning services were provided was aged 18 years or over.

Sections 115 – 116B set out the infringement offence regime:

115 Infringement offences

In this section and sections 116 to 116B,—

infringement fee, in relation to an infringement offence, means an amount prescribed for the purposes of this section in regulations made under section 117(1) (rb)

infringement offence means an offence against section 114 or any regulations made under section 119(d) in relation to artificial UV tanning services.

116 Commission of infringement offences

A person who is alleged to have committed an infringement offence may either—

- (a) be proceeded against for the alleged offence by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
- (b) be served with an infringement notice as provided for in section 116A.

116A Infringement notices

- (1) If a person authorised to issue infringement notices under this section observes a person committing an infringement offence, or he or she has reasonable cause to believe that such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.
- (2) Any person authorised to issue infringement notices under this section (not necessarily the person who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person's last known place of residence or business.
- (3) An infringement notice (or a copy of it) sent to a person under subsection (2) is to be treated as having been served on that person when it was posted.
- (4) Every infringement notice must be in the prescribed form and must contain the following particulars:

- (a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and
 - (b) the amount of the infringement fee; and
 - (c) the address of the place at which the infringement fee may be paid; and
 - (d) the time within which the infringement fee must be paid; and
 - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - (f) a statement that the person served with the notice has a right to request a hearing; and
 - (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and
 - (h) any other particulars that may be prescribed.
- (5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with the necessary modifications.
- (6) For the purposes of this section, the following persons are authorised to issue infringement notices under this section:
- (a) any environmental health officer;
 - (b) any person, whether or not an employee of the Ministry or a local authority, who is authorised in writing by the Director-General to issue infringement notices under this section.

116B Payment of infringement fees

- (1) Infringement fees for infringement notices issued on behalf of the Ministry are payable to the Ministry.
- (2) Infringement fees for infringement notices issued on behalf of a local authority are payable to the local authority.

Section 117 of the Act provides that regulations may be made which prescribe, for the purposes of section 115, the infringement fee or fees payable in respect of an infringement offence, which in the case of an individual may not exceed \$1,000 (section 117(1)(rb)(i)) or in the case of a body corporate, may not exceed \$5,000 (section 117(1)(rb)(ii)).

Note: The Ministry is proposing to introduce new regulations to protect the public from harm from commercial sunbeds.

The only offence in relation to artificial UV tanning services is providing an artificial UV tanning service to a person under the age of 18 years. The offence is strict liability and both the owner and operator (employee) are liable for the offence.

Fair Trading Act 1986 – Advertising and promotion

9 Misleading and deceptive conduct generally

No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

11 Misleading conduct in relation to services

No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services.

40 Contraventions of provisions of Parts 1 to 4A an offence

Every person who contravenes a provision of Part 1 (except sections 9, 14(2), 23, or 24), Part 3, or Part 4 commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$200,000; and
- (b) in the case of a body corporate, to a fine not exceeding \$600,000.

Bylaws

The Auckland Council introduced a bylaw in 2013 which requires sunbed operators to be licensed and comply with minimum standards. These include providing a copy of the consent form to clients and conducting a skin assessment. The South Wairarapa and Masterton Council also implemented a bylaw in 2013 which requires a premises to be licenced, however does not refer to the Standard. (Note: Enquiries will be conducted to establish if there are bylaws in the territorial authority where operators have been selected for a CPO).

KEY STAKEHOLDERS:

Sally Gilbert
 Manager
 Environmental and Boarder Health
 Public Health
 Protection Regulation and Assurance
 Ministry of Health
 DDI 04 8164345
 Mobile s 9(2)(a)

Public Health Units managers and Health Protection Officers

s 9(2)(a)

s 9(2)(a)

Project Aim

To increase levels of compliance with section 14 of the Health Act 1956, section 11 of the Fair Trading Act 1986, the voluntary Standards and any applicable by-laws.

Project objectives	Strategies
<p>Compliance and / or enforcement action is undertaken against operators who are identified as operating in breach of section 114 of the Act (Ban on providing artificial UV tanning services to persons under 18 years)</p>	<p>Undertake a Controlled Purchase Operation to establish those operators who will provide an artificial tanning service to a person under 18 years</p> <p>Complete an investigation file for consideration by Health Legal. This will include: Preparing a file for the owner and / or operator With reference to the Solicitor's Guidelines, recommending either: No further action; or Warning; or Infringement Notice; or Prosecution</p>
<p>Operators are using the consent form and skin assessment form prescribed by the Standard</p>	<p>Use the volunteer's statement to identify operators who did not require the volunteer to complete a consent form and / or a skin assessment form</p> <p>Provide operators who are not using the forms prescribed by the Standard with electronic and hard copy versions of the forms</p>
<p>Operators are not displaying material which refers to the health benefits of sunbed use in breach of section 11 of the Fair Trading Act 1986 (<i>Misleading conduct in relation to services</i>)</p>	<p>Examine the operators' website and premises to establish whether there are displaying:</p> <ul style="list-style-type: none"> • Beneficial health claims associated with sunbed use; and / or

	<ul style="list-style-type: none"> Misleading information related to the use of sunbeds and the link to Vitamin D
District councils are informed of operators who are operating in breach of the council bylaws	Inform the relevant council where breaches of council bylaws are identified
The Commerce Commission is informed of operators who are operating in breach of the Fair Trading Act 1986	<p>Inform the Commerce Commission where breaches of the Fair Trading Act 1986 are identified</p> <p>Obtain copies of any advertising brochures or pamphlets</p>

Released under the Official Information Act 1982

Project Methodology

A total of 18 premises will be visited to assess operator compliance. These premises have been identified by the Ministry of Health and Consumer New Zealand as non-compliant premises (*Appendices 1 & 2*). A further 5 premises have been identified as ones where visits are recommended. Identified non-compliances include:

- Providing an artificial UV tanning service to a person under 18 (breach of section 14 of the Act);
- Providing an artificial UV tanning service to a person with fair skin (breach of the Standards)

Controlled Purchase Operations (CPOs) will be carried out to establish whether operators are complying with section 114 of the Act i.e. they do not provide a service to a person under the age of 18 years.

Prior to the CPO the following enquires will be undertaken:

- Obtain previous survey results / information from PHUs and Consumer New Zealand
- Conduct internet search to ascertain whether there are any breaches of the Fair Trading Act 1986
- Confirmation of owner current owner and operating hours
- Liaise with Public Health Units. Organise Health Protection Officer assistance with CPO

Two Ministry of Health compliance and enforcement contractors s 9(2)(a) will undertake the CPOs. The premises to be visited will be allocated according to their region:

- s 9(2)(a) – Wellington region, Christchurch, Southland, Northland, Bay of Plenty
- s 9(2)(a) – Hawkes Bay, Taranaki, Auckland, Marlborough.

An HPO from each region will assist with the CPO. If a service is provided, the HPO will remain in the vehicle with the volunteer to ensure the volunteer's safety and wellbeing. The enforcement officer will enter the premises and interview the operator.

Procedure

The procedure for conducting a CPO will follow the procedure outlined in the 'Controlled Purchase Operations' chapter of the Smokefree Compliance and Enforcement Manual.

The Volunteer

The volunteer will be carefully selected, well trained and credible. The parent(s) and / or caregiver of the volunteer will be required to provide consent. The volunteer will be female and aged 16-17 years. The volunteer will be either skin type ii, iii or iv.

The volunteer will be informed that they are not to carry any identification. If the volunteer is asked for their age, they will be instructed to reply truthfully. The volunteer will be familiar with the forms they will be required to complete if a service is offered. The volunteer will enter the sunbed room, but will not have a sunbed session.

Prior to the CPO the volunteer will be required to complete the CPO forms and will have their photograph taken. The volunteer will also complete the skin assessment form and the consent form contained in the Standard so that they are familiar with the layout and content of these forms.

The volunteer will be given specific information about the solaria. This will be contained in a Premises Profile file which will include the type of premises (e.g. beauty clinic, gymnasium), the type of sunbed (e.g. horizontal or vertical), operation of sunbed (e.g. token operated or time set by operator), a photograph of the owner or operator (if one is available) and any material or advertising that has been identified as being in breach of the Fair Trading Act 1986.

The volunteer will be given enough money to purchase one tanning session.

Where the compliance officer is required to enter the solaria to interview the operator, a staff member from the Public Health Unit will stay with the volunteer. It is not recommended the volunteer is left alone in any circumstances.

Service

The volunteer will enter the solaria and request a tanning session. They will be instructed not to request a session from a person who looks younger than 18 years. The volunteer may be asked to provide their proof of age document. If this occurs, the volunteer will state that they do not have any identification. The volunteer may be asked their age and where this occurs, they will reply truthfully.

If a tanning session is offered, the volunteer may be asked to complete the skin assessment and consent forms. The forms will either be completed by the volunteer, or with the assistance of the operator. This will take approximately 10 – 20 minutes to complete. The volunteer will provide truthful answers when completing the forms.

The volunteer will give their correct name and date of birth however will give a fictitious address and the mobile number of the enforcement officer.

The volunteer will purchase one tanning session which will cost between \$8 - \$20 dollars. The volunteer will pay in cash.

The volunteer may be asked if they have parental / caregiver consent. Where this occurs, the volunteer will answer 'yes'. In some instances, the volunteer may be given a consent form and be requested to return with the completed form. This form will subsequently be completed by the enforcement officer (using their name) and a 2nd visit will be arranged.

If the volunteer is permitted to have a tanning session, they will enter the sunbed room. The operator may provide the volunteer with information on how to operate the sunbed. Under no circumstances will the volunteer have a tanning session.

The volunteer may have to wait for their session if another client is using the sunbed. They will text / ring the enforcement officer to let the enforcement officer know that they are required to wait and may therefore be in the premises longer than anticipated.

Where possible, the volunteer will obtain copies of any advertising brochures or pamphlets on display at the premises (whether at reception or in the sunbed room). Operators do not stay in the room while tanning sessions are taking place. When the operator leaves the room, the volunteer will make a written note of:

- Any advertising displayed on the walls or on the exterior of the sunbed unit;
- The type of bed in the room i.e. vertical or horizontal;
- The mode of operating the sunbed i.e. token; timer pre-set by operator or timer able to be set by volunteer
- The duration of the tanning session
- Any eye protection provided
- Any hygiene notices regarding cleaning of the sunbed after use

The volunteer will be requested to take photographs on their mobile phone. These photographs will be of the layout of the sunbed room. These photographs will supplement any notes taken. The volunteer should *not* take photographs if there is a sign anywhere in the premises that prohibits the use of personal photography.

This should take approximately 10 – 15 minutes. After the volunteer has finished making notes and taking photographs, they will leave the premises and return immediately to the vehicle.

If the volunteer feels unsafe at any stage of the CPO, they will be instructed to leave the premises immediately.

The volunteer will give the enforcement officer any change, any forms or promotional material they have been given by the operator (for example a copy of the consent form) and any notes made by the volunteer whilst inside the sunbed room.

The volunteer will then complete the Solaria Controlled Purchase Notes.

Interviewing Owner and / or Operator

The photographs of the volunteer will be taken into the premises, along with a Letter of Authorisation signed by the Director-General of Health (*Appendix 7*). The enforcement officer will also produce photographic evidence as to their identity.

Upon entering the premises the enforcement officer will approach the operator and introduce themselves. The reason for the visit will be explained, and that the enforcement officer has some questions they would like to ask.

Note: The term 'operator' is not defined in the Act. Given its ordinary meaning and usage, an 'operator' is a person that enables a device or machinery to operate or be used. Therefore, the 'operator' is the person who enables an artificial tanning service to take place and could be an employee / contractor / owner.

The interview with the operator /owner will be recorded on the Interview Under Caution Form (*Appendix 6*). Three interviews have been pre-formatted:

- Interview plan for non-owner (operator)
- Interview plan for owners (where service provided by the owner)
- Interview plan for owners (where service provided by a staff member)

As there are no powers to request information, the operator will be informed that they are not required to answer any questions, and they may have a lawyer or a support person of their choosing present to provide assistance.

If it appears the operator is having difficulty understanding the questions, he/she will be offered the services of an interpreter. If the operator requests the services of an interpreter, the interview will then cease, and interpreter will be arranged.

If the operator states they are under the age of 18 years, the interview will cease immediately.

If the operator is not the owner and the owner is present the above process will be repeated and the owner will be interviewed.

Wherever possible both the operator and the owner should be interviewed in full as both will potentially be liable under the Health Act. Their statements may provide a helpful

cross-check against each other and an interview provides an opportunity for a more thorough or meaningful interaction with an owner, in comparison to sending a letter. If the owner is not present at the time of the visit, the Compliance Officer should ring the owner as soon as possible after the CPO visit and arrange a suitable time for an interview.

Where there is more than one owner (more than one director of a company, partnership) it is recommended one owner is interviewed in person and the other owner/s are interviewed via telephone as it is important to assess the liability of all parties to the offence.

Points to address during interview with operator (owner)

- What type of UV sunbed machine is used (i.e. stand up or horizontal?)
- How long did the staff member permit the volunteer to use the service?
- Why did the staff member provide the service to the volunteer?
- What training have you had with regard to providing this service? If training, was it recorded? [If recorded request to view the document]
- Briefly explain the Infringement Notice process
- Ask the staff member for any comment

Points to address during interview with owner

- Who owns the business? (If a company ask for the names of the directors)
- How long has the owner owned the business for?
- How long has the staff member who provided the service worked for the owner?
- Is the owner aware that it is an offence to provide an artificial tanning service to a person under 18 years?
- Does the owner provide training to their staff on carrying out skin type assessments? (If yes, ask for copy of training materials)
- If yes to the above question, Does the owner have any copies of training records?
- Is the owner aware of the ban on providing an artificial tanning service to a person under 18?
- Request permission to view the sunbed room
- If there is any promotional material displayed, advise the owner that it must be removed
- Briefly explain the Infringement Notice process.
- Ask the owner for any comment

Copies of documents and photographs will not be taken unless the operator or the owner consents to this at the time of the interview. It must be proven the owner/operator provided an artificial UV tanning service. Although not defined in the Act, in the context of the provision of artificial UV tanning services, the word 'provide' will be taken to mean 'make available'. The Oxford English Dictionary⁸ definition of "provide" includes "make available for use; supply".

In some circumstances the owner may also need to be informed that they are displaying false or misleading material in breach of the Fair Trading Act 1986 or are in breach of Council bylaws. Where the operator is displaying false or misleading material, they will be informed that this information will be forwarded to the Commerce Commission for further action. Where the operator is providing artificial UV tanning services in breach of Council bylaws, the enforcement officer will inform the operator that this information will be forwarded onto the appropriate local council for further action.

No service

If no sunbed session is provided, the volunteer will return to the car, retain the money for the purchase, and repeat the process at the next premises.

Following the conclusion of the CPO, a letter will be sent to the owner to inform them that a CPO was conducted and there was no provision of a UV tanning service to the underage volunteer (*Appendix 8*).

Evidence collection

The change and any documentation will be kept in the custody of the enforcement officer.

Reporting and Files

The Act provides for the issuing of an infringement notice which must be in the 'prescribed form' and must contain certain particulars (section 116A(4)). As there are currently no regulations which set out the 'prescribed form' of an infringement notice, in most instances, a warning letter will be sent to the operator.

The warning letter will outline the circumstances of the breach and the relevant sections of the Act including the maximum penalties. The letter will conclude by advising the operator that enforcement officers will continue to monitor the premises to ensure compliance with the Act.

There may be a small number of cases where, having regard to the Solicitor General's Prosecution Guidelines, a prosecution may be warranted. Where this situation arises, the advice of Health Legal will be sought to determine how to proceed.

⁸ <https://en.oxforddictionaries.com/definition/provide> (accessed 25 March 2019)

A report summarising the findings of the Controlled Purchase Operation will be prepared and forwarded to Sally Gilbert, Manager, Environmental and Border Health, Ministry of Health. A copy will also be provided to Peter Burt, Contract Manager, Ministry of Health.

Media

Any media enquiries will be responded to by the Ministry of Health.

List of Appendices

Appendix 1: Ministry of Health: Non-compliant Operators 2018

Appendix 2: Consumer Institute Non-Compliant Operators 2018

Appendix 3: Caregiver / Volunteer Consent Form

Appendix 4: Volunteer Acknowledgement Form

Appendix 5: Volunteer Solaria Controlled Purchase

Appendix 6: Interview Under Caution Form

Appendix 7: DG introductory letter (includes infringement notice authorisation)

Appendix 8: Letter to owner - no service

Appendix 9: Letter to owner – service, no prosecution

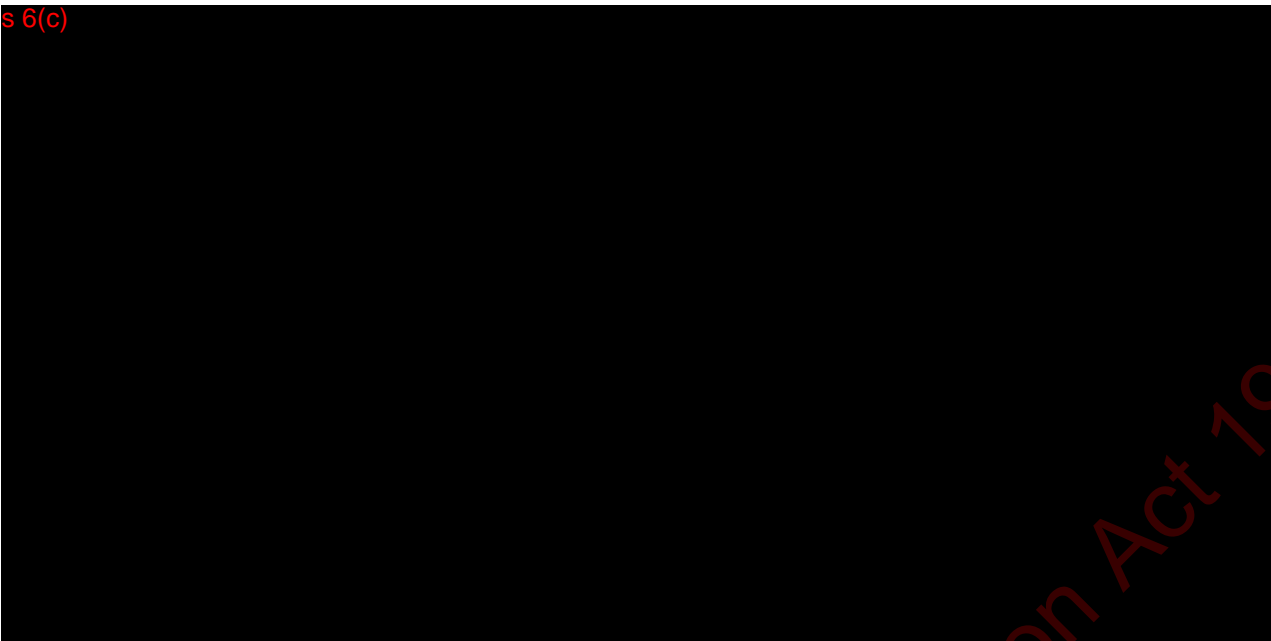
Appendix 10: Infringement Notice Scheme: Policy and Procedure

Appendix 1 – Ministry of Health: Non-Compliant Operators 2018

s 6(c)

Released under the Official Information Act 1982

s 6(c)



Released under the Official Information Act 1982

Appendix 2 – Consumer New Zealand: Non-Compliant Operators 2018

In February 2018 nine operators were identified as being non-compliant with the Standards by Consumer NZ. One operator was also listed in the Ministry of Health list of Non-Compliant Operators s 6(c) [REDACTED] Therefore, nine further operators will be checked for compliance.

Note: Background enquiries will be undertaken in order to prepare an operator profile once the project has been approved.

s 6(c)



s 6(c)



Further operators of concern

Consider checking operators identified by NZ Consumer 2017 as operators of concern. Eight operators were identified as either having not provided consent forms to the mystery shopper and / or permitted a fair skinned person to use the sunbed. Three of these operators have been identified in Appendix 1 and 2. If time permits, the five outstanding operators (no service in their area or travel time permits) will be checked for compliance.

s 6(c)



Released under the Official Information Act 1982

Appendix 3 – Caregiver/ Volunteer Consent Form

1. Parent/ Caregiver Section:

(a) My full name is

and I am the parent/caregiver of

(b) The procedure for the Solaria Controlled Purchase Operation has been explained to me by

and I have given my consent for

_____ to participate as a volunteer. I have been shown a copy of the Volunteer Briefing Form.

(c) I understand that _____ will be required to request a sunbed session however she will not be required to undertake the session.

I understand that _____ may be required to attend court to give evidence

Signed: _____

Date: _____

Time: _____

Place: _____

2. Volunteer Section:

(a) My full name is _____ and my date of birth is _____ . I am aged _____ years. My mobile number is: _____

(b) I have had the procedure for the Solaria Controlled Purchase Operation explained to me by _____ and I am volunteering to assist in this project.

(c) I confirm that I have never used a sunbed.

Signed: _____

Date: _____

Time: _____

Place: _____

Witnessed: _____

Released under the Official Information Act 1982

Appendix 4 – Volunteer Briefing Form

Thank you for your interest in being involved in the CPO.

You have already been verbally briefed about what will be happening during the Solaria Controlled Purchase Operation and the role of the under 18 volunteer. Please read the following information and feel free to ask any questions if anything is unclear.

- Photographs have been taken of you. They will be shown to the operator if you are offered a service. If requested your correct name and date of birth (age) will be provided to the operator.
- Immediately prior to entering the premises you will be given information to assist you to be familiar with the operator/operation. For example, type of bed, (vertical / horizontal), location of the sunbed room, documents that you may be or may not be asked to complete, reason for visiting the particular premises.
- You have been shown how to complete the consent form and the skin assessment form. If requested by the operator to complete these forms you will write the same information as in the practice forms. Your guardian will be the name of the enforcement officer and you will provide a fictitious address. You will be familiar with the skin assessment form and be familiar with the Fitzpatrick Scale and how to complete it according to your skin type.
- You will be permitted to have your mobile phone. If you are required to wait for the service, (staff may be busy / someone is using the service) you should text or ring the enforcement officer to inform them you will be delayed. If a phone number is asked from you will give the operator the enforcement officer's mobile number.
- You should take photographs on your mobile phone of the sunbed room (e.g. layout, instructions, position of the bed, equipment provided such as goggles. However, if there is a sign which indicates photographs are not permitted, you should not take any.
- If at any time you feel unsafe or you change your mind about taking part in the Controlled Purchase Operation you should to leave the premises and immediately return to the car.
- In some instances, the operator may show you how to turn the sunbed on. However, under no circumstances are you to turn the sunbed on.
- When you enter the premises, if there are two or more operators, you should approach the person who appears to be over 18. Do not request a tanning session from a person who looks under the age of 18 years.
- You may have been shown a photograph of the operator. If possible, you should approach this person for a tanning service.

- The operator will inform you of the cost of a session and in most instances the cost of purchasing a concession card.
- You will be provided with sufficient money for one session. The cost of one session will be between \$8 - \$20 dollars.
- The operator may give you documents (advertising the sunbed service or their business, business card). These are to be accepted.
- Advertising brochures or pamphlets may be on display at the counter or sunbed room. You should obtain a copy of this advertising material.
- If you are asked your age you are to tell the truth. If you are asked for proof of age identification (drivers' licence, passport, HANZ+18 card) you will state you do not have any identification.
- If you are asked whether you have previously had any sunbed sessions, you will truthfully reply no.
- If the service is refused, you are to politely thank the operator and immediately return to the car.
- You may receive the service without being asked any questions or being requested to complete any forms.
- You may receive the service after being requested to complete forms. You have been given copies of these forms – Consent Form, Skin Assessment form. You should be aware these forms may slightly differ in nature, however, will usually have the same information.
- The operators may assist you to complete these forms or alternatively you will be asked to complete them yourself. You may be given a copy of the consent form. Do not request a copy yourself.
- The operator may ask if you have parental consent. You will reply yes. If the operator asks you to contact your parent, you will reply they are not able to be contacted as they are working.
- The operator may give you a parental form to complete before you are permitted to use the sunbed. Take the form and return to the car.
- The completing of the forms may take approximately 10-20 minutes.
- When the forms are completed, the operator will decide whether or not to permit you to use the sunbed. If the operator declines to let you use the sunbed, you are to leave the premises immediately and return to the car.
- If the operator permits you to use the sunbed, they will most likely inform you how long your initial session will be. A session will usually be between 8 – 20 minutes.
- You should pay particular attention to the operator's verbal instructions. For example, they may inform you about how to use the sunbed, that you cannot have a session within 48 hours.

- The conversation will need to be recorded on the Volunteer Notes. You have been provided with a copy of the Volunteer Notes form prior to the CPO.
- The operator may give you information about the health concerns/ benefits of the sunbed. For instance, they may inform you not to use if pregnant, or alternatively that using a sunbed is safe, better than the sun and/or is good for increasing Vitamin D.
- You are required to look for warning signs at both the entrance and in the sunbed room. You have been shown a copy of the warning sign.
- Once the operator has shown you how to use the sunbed, they will leave you in the sunbed room. You should make notes of the layout of the room / eye protection / hygiene (towels / sprays) type of bed and advertising, if any. You should also make notes regarding the appearance of the operator.
- Once you have finished making your notes, leave the premises immediately and return to the vehicle.
- Once you have returned to the vehicle, you will give the enforcement officer any change, any documents you were given by the operator and your handwritten notes
- The Enforcement Officer will then give you the Solaria Volunteer Notes Form to complete.
- **Important: If you have any concerns at any stage during the CPO return to the vehicle immediately.**

s 9(2)(b)(ii)

I am aware my parent/ caregiver has seen a copy of this form. I have read and understand the information detailed above.

Volunteer's name _____

Volunteer's signature _____

Enforcement Officer _____

Date _____

Appendix 5 – Volunteer Controlled Purchase Operation Notes

Volunteer Information

Full Name:

Address:

Phone: (home)

Parent/Caregiver Name:

Phone: (cell phone)

Date of Birth:

Age:

Ethnicity:

Photo Taken:

Facial Yes/No

Full Length Yes/No

Solaria Volunteer Consent Form Completed:

Yes/No

Premises Information

Premises Type:

Hairdressers

Gym

Beauty Clinic

Other

Premises Name:

Premises Address:

Warning sign at counter:

Yes/No

Advertising signs: (describe)

Yes/No

Age/ Identification

Were you asked your age?

Yes/No

Were you asked for identification?

Yes/No

Were you asked if you had parental consent?

Yes/No

Were you given a form for parental consent?

Yes/No

Location:	
Type of solaria:	Horizontal/Vertical
Eye Protection provided?	Yes/No
Warning signs?	Yes/No
Any Advertising posters?	Yes/No
Any instructions for cleaning the bed?	Yes/No
Session duration?	
Token operated?	Yes/No
Time set by operator?	Yes/No

Documentary Exhibits

Photographs taken Yes/No

Number and description of photographs

For each photograph, state location taken and description)

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Photographs have been forwarded to Compliance Officer Yes

Advertising material (brochures and pamphlets) Yes/No

Describe advertising material (location obtained, name, content)

- 1.
- 2.
- 3.
- 4.

Circumstances

(State exactly what happened when you went into the premises including who said what)

Amount:

Change:

Change given to:

Receipt: Yes/No

Receipt given to:

Date / Time:

Volunteer Signature:

	Personal Details
4.	What is your full name?
5.	What is your residential address?
6.	What is your date of birth?
7.	What is your occupation?
8.	What is your contact phone number?
9.	Are you the operator / owner of the business?

Released under the Official Information Act 1982

INTERVIEW PLAN FOR NON-OWNERS	
	<i>Owner /employment details</i>
10.	What is the owner's name and contact phone number?
11.	How long have you worked here for?
	<i>Acknowledgement of service to volunteer</i>
12.	This person has just been provided with an artificial UV tanning service. She is [volunteer's age]. Do you recognise this person?
13.	Did you provide that person with an artificial UV tanning service a short time ago?
14.	<i>If service is denied: (cross out section 14 if N/A)</i>
14.1	The person the volunteer described as having provided the service matches your description [State and record description given by volunteer.]
14.2	That description matches what you are wearing doesn't it? [<i>Make notes of clothing worn by interviewee</i>]
14.3	Is there anyone else working here today that matches that description? <i>Record name and details and ask to speak to that person next, but in the meantime continue with interview" question 17 and then questions 21 onwards.</i>
	<i>Service Provided</i>
15.	How long did you permit the volunteer to use the sunbed/solaria?

16.	What type of sunbed / solarium is used?
	<i>Pre-service due diligence</i>
17.	Is a new customer ordinarily required to complete forms before their first sunbed service?
18.	Did the volunteer complete any forms or paperwork before you provided the service? <i>Request copies of those forms – record what forms</i>
19.	Did you ask to see any proof of the volunteer's age? Why or why not?
20.	Is it part of the salon / business's usual process to ask for proof of age?
21.	Do you know it is illegal to provide a person under the age of 18 years with an artificial UV tanning service?
	<i>Training</i>
22.	Have you received any training in relation to age-restrictions for sunbed services?
23.	Have you received any other training in relation to carrying out skin-type assessments?
24.	Have you received any other training in relation to providing artificial UV tanning services?
25.	What type of training and how often?

INTERVIEW PLAN FOR OWNERS (where service provided by the owner)

	Ownership details
10.	How long have you owned the business for?
11.	What is the business's structure (company, partnership, etc.)
12.	Who are the other directors or partners (if any)?
13.	Are you authorised to speak on behalf of the company/other directors/partnership?
	Acknowledgement of service to volunteer
14.	This person has just been provided with an artificial UV tanning service. She is [volunteer's age]. Do you recognise this person?
15.	Did you provide that person with an artificial UV tanning service a short time ago?
16	If service is denied altogether
16.1	The person the volunteer described as having the service matches your description. [State and record description given by volunteer].
16.2	That description matches what you are wearing doesn't it. <i>Make notes of clothing worn by interviewee.</i>
16.3	Is there anyone else working here today that matches that description? <i>Record name and details and ask to speak to that person next, but in the meantime continue with the interview.</i>

	<i>Service provided</i>
17.	How long did you permit the volunteer to use the sunbed / solaria?
18.	What kind of sunbed / solaria is used?
	<i>Pre-service due diligence</i>
19.	Is a customer ordinarily required to complete forms before their first sunbed service?
20.	Did the volunteer complete any forms or paperwork before you provided the service? <i>Request copies of those forms</i>
21.	Did you ask to see any proof of the volunteer's age? Why or why not.
22.	Is it part of your usual process to ask for proof of age.
23.	Do you know it is illegal to provide a person under the age of 18 years with an artificial UV tanning service?
	<i>Opportunity to respond</i>
24.	Do you have any further comment to make at this stage?
	<i>Inspection of premises</i>
25.	Request permission to view the sunbed room. <i>Make note of consent or refusal.</i>
26.	Request permission to photograph the sunbed room. <i>Make note of consent or refusal.</i>

	Closing
28.	<i>Do you have any final comment to make?</i>
	The next step from the Ministry of Health's perspective is for a decision to be made about the appropriate enforcement in this case. The options include taking no further action or a criminal prosecution. The Health Act also provides for infringement notices to be issued (which is bit like a fine) in the future. You will be advised by letter of the decision in this case.
	<i>Offer opportunity to review and sign notes. Makes notes of any reasons to review and sign the notes. Record if copy requested and provided.</i>

Signature:

Signature witnessed by:

Date:

Released under the Official Information Act 1982

INTERVIEW PLAN FOR OWNERS (where service provided by a staff member)

	<i>Ownership details</i>
10.	How long have you owned the business for?
11.	What is the business's structure (company, partnership, etc.)
12.	Who are the other directors or partners (if any)?
13.	Are you authorised to speak on behalf of the company/other directors/partnership?
	<i>Acknowledgement of service to volunteer</i>
14.	This person has just been provided with an artificial UV tanning service. She is [volunteer's age]. Do you recognise this person?
15.	Did you provide that person with an artificial UV tanning service a short time ago?
16.	<i>How long has the staff member who provided the service worked here for?</i>
17	<i>If service is denied altogether</i>
17.1	The person the volunteer described as having the service matches your staff member's description. [<i>State and record description given by volunteer</i>].
17.2	That description matches what your staff member is wearing doesn't it? <i>Make notes of clothing worn by staff member.</i>
	<i>Pre-service due diligence</i>

18.	Is a new customer ordinarily required to complete forms before their first sunbed service?
19.	Is it part of the salon / business's usual process to ask for proof of age?
20.	Do you know it is illegal to provide a person under the age of 18 years with an artificial UV tanning service?
	Training
21.	Have you provided your staff with any training in relation to age-restriction for sunbed services?
22.	What kind of training, and how often?
23.	Have you provided you staff with any other training to relation to carrying out skin-type assessments?
24.	What kind of training, and how often?
25.	Have you provided you staff with any other training in relation to providing artificial UV training services?
26.	What kind of training, and how often?
27.	Can you provide copies of any training records or materials? <i>Make notes of records obtained.</i>
	Opportunity to respond
28.	Do you have any further comment to make at this stage?

	Is the solaria displaying false or misleading material in breach of the Fair Trading Act 1986 or are in breach of Council by laws. Inform the operator of the allegation and this information will be forwarded to the Commerce Commission and / or appropriate territorial authority. <i>Take note of their response and if they remove the advertising material from display.</i>
	Closing
32.	<i>Do you have any final comment to make?</i>
	The next step from the Ministry of Health's perspective is for a decision to be made about the appropriate enforcement in this case. The options include taking no further action or a criminal prosecution. The Health Act also provides for infringement notices to be issued (which is bit like a fine) in the future. You will be advised by letter of the decision in this case.
	<i>Offer opportunity to review and sign notes. Makes notes of any reasons to review and sign the notes. Record if copy requested and provided.</i>

Signature:

Signature witnessed by:

Date:

Appendix 8 - Letter to Retailer: No Sale

[Date]

[Address]

Dear Sir/Madam

Section 114 Health Act 1956 - Ban on providing artificial UV tanning services to persons under 18 years

Your premises [name of premises] was visited by an Enforcement Officer acting under the authority of the Director-General of Health on [insert relevant date] as part of a Controlled Purchase Operation. The purpose of the Controlled Purchase Operation was to assess retailer compliance with section 114 of the Health Act 1956 (the Act) which bans the provision of artificial UV tanning services to persons under 18 years.

I am pleased to inform you that of the [number of premises visited] premises visited during this period, you were amongst the [enter number] premises that did not provide an artificial tanning service to a person under the age of 18 years.

Enforcement Officers will continue to check sunbed operators for compliance with section 114 of the Act so please ensure that both you and your staff remain familiar with the legal requirements in relation to the provision of artificial UV tanning services to underage persons.

The provision of artificial UV tanning services to persons under the age of 18 is viewed very seriously and it is the Ministry of Health's policy to issue an Infringement Notice where breaches of the Act are proven or prosecute in appropriate cases. In the case of a successful prosecution, the maximum fine that can be ordered by the court is \$10,000 in the case of a body corporate (i.e. company) or \$2,000 in the case of an individual.

Yours sincerely

xxxxx

Appendix 9 - Letter to Retailer: Sale by an Employee (NFA decision)

[Date]

[Address]

Dear Sir/Madam

Section 114 Health Act 1956 - Ban on providing artificial UV tanning services to persons under 18 years

Your premises was visited by an Enforcement Officer acting under the authority of the Director-General of Health on [insert relevant date] as part of a Controlled Purchase Operation. The purpose of the Controlled Purchase Operation was to assess operator compliance with section 114 of the Health Act 1956 (the Act) which bans the provision of artificial UV tanning services to persons under 18 years.

During a visit on [date of visit], your employee, [name], provided an artificial tanning service to a [age] year old volunteer.

On this occasion, no further action will be taken against you as the owner however Enforcement Officers will continue to visit premises to monitor compliance with the Act. Please ensure that both you and your staff are fully familiar with the requirements of section 114 of the Act.

The provision of artificial UV tanning services to persons under the age of 18 is viewed very seriously and it is the Ministry of Health's policy to issue an Infringement Notice where breaches of the Act are proven or prosecute in appropriate cases. In the case of an Infringement Notice, the maximum fee payable is \$1,000 for an individual or \$5,000 for a body corporate. In the case of a successful prosecution, the maximum fine that can be ordered by the court is \$10,000 in the case of a body corporate (i.e. company) or \$2,000 in the case of an individual.

Yours sincerely

XXXXX

Appendix 11 – Infringement Notice Scheme: Policy and Procedure

Introduction

The Health Act 1956 (the Act) establishes an Infringement Notice scheme in relation to the provision of artificial UV Tanning services to persons under the age of 18.

The infringement notice scheme provides an administratively efficient method of encouraging compliance with the Act by imposing a set financial penalty and the infringement offence notice is a proportionate response to offending, which avoids the formality of court proceedings and does not impose a full criminal penalty.

The procedure for infringement notices is prescribed in Section 21 of the Summary Proceedings Act 1957. When an operator / owner is served an infringement notice they will also be provided with a copy of their Summary of Rights.

Legislative Authority

Note: The authority to issue infringement notices does not have any practical effect until regulations are prescribed.

Section 114 provides that it is an offence for owners and operators of artificial UV tanning services to provide an artificial UV tanning service to a person under 18 years.

It is a defence to a charge if the person who provided the service sighted an evidence of age document (i.e. a current passport; a current New Zealand driving licence or a HANZ card with a photograph and date of birth).

A person who is alleged to have provided an artificial UV tanning service to a person under 18 years may be proceeded against by Court proceedings or by serving the person with an Infringement Notice (section 116).

The maximum fine for committing an offence against section 114 is \$2,000 for an individual (section 114(3)(a) or \$10,000 for a body corporate (section 114 (3)(b)).

The maximum infringement fee payable for committing an offence against section 114 is \$1,000 for an individual or \$5,000 for a body corporate (section 117(1)(rb)).

An authorised person may issue infringement notices where they either observe a person committing an infringement offence, or where they have reasonable cause to believe that an infringement offence is being, or has been committed.

An authorised person is any person, who is authorised by the Director-General to issue infringement notices under section 116A.

An authorised person may serve the notice personally or post it to the person's address.

Criteria for issuing an Infringement Notice

Whether or not an Infringement Notice should be issued will be determined on a case-by-case basis taking into account the following factors:

- Whether the owner / operator was made aware of the breaches prior to the Controlled Purchase Operation;
- Whether the owner/ operator has previously received a warning letter;
- Whether the owner witnessed the operator providing the service and condoned the activity;
- Where the operator is an employee, whether the employee received training on the ban on providing UV tanning services to persons under 18.

Rights of the recipient of an Infringement Notice

Upon receiving an Infringement Notice, (and a copy of their Summary of Rights) a person may

- pay the fee within 28 days of the date of the notice; or,
- request in writing to waive the fee; or
- request a defended or non-defended hearing in the District Court.

The Ministry of Health may withdraw the Infringement Notice or reject a waiver request. A letter must be sent following the Ministry's decision, advising the person of the outcome and the available options.

Request for Waiver

Where a person wants the Ministry to consider waiving the Notice, they must provide a written explanation outlining their reasons for this and must include the date of the infringement, the 6-digit Infringement Notice number, and their name, phone number and address.

Upon receiving a request for waiver, the Ministry will consider the explanation provided and advise the person in writing of the outcome.

Request for a Hearing

If a person denies liability for the offence, they must write to the Ministry within 28 days of the date of the notice and request a defended hearing. The request must be signed and include the infringement notice number.

Non-defended hearing

If a person admits liability but want the Court to consider extenuating circumstances, a non-defended hearing request must be made in writing to the Ministry within 28 days of

the date of the notice. The request must be signed and include the infringement notice number.

Payment Process

An infringement fee can be paid in three ways:

1. Internet Banking

Pay via Internet banking into account 030049 0001805 29 (Ministry of Health Crown Account).

2. Cheque

A cheque may be sent to the Ministry of Health at the following address:

Ministry of Health,
Health Legal – Infringement Officer,
PO Box 5013,
WELLINGTON 6140.

Payment must be made within 28 days of the date of the notice.

Payment by instalments will not be accepted.

Non-Payment Process

If payment is not received within the 28 days following the receipt of the infringement notice, (or a request for a hearing has not been received within 28 days) a reminder notice will be sent the operator and / or owners last known address. The reminder notice will contain substantially the same particulars of the infringement notice.

If the operator / owner does not respond to their reminder notice within 28 days a copy of the reminder notice will be sent to the Ministry of Justice. The Ministry of Justice do accept instalment payments.

Note: This policy will be reviewed when the regulations are prescribed.