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19th September 2021

Att: **Mark Carey**

EPA Principal Policy Officer

radiation.reform@epa.nsw.gov.au

CC' **The Hon. Brad Hazzard**

Minister of Health

Re: Review of New South Wales Radiation Act (1990)

The Australian Society of Dermal Clinicians (ASDC) is writing to provide our views in relation to the review of the New South Wales Radiation Act (1990) and the Environmental Protection Authority (EPA) issues paper.

We provide feedback as an industry body representing professional skin health practitioners that provide health services directly impacted by this radiation legislation in NSW. This includes providing cosmetic and therapeutic (health) services using **non-ionising radiation** apparatus, including light and LASER modalities. As an industry organisation, we advocate for safety and standards of care for consumers receiving skin therapies and the provision of therapy utilising an evidence-based approach.

As the peak professional body for Dermal Clinicians and Therapists, we have identified areas within the regulation related to the proposed regulation of cosmetic LASER and IPL sources that impact our profession. We would like to highlight and respond to these impacts in the hopes that these recommendations and points can be further considered in further amendments to the regulation before implementation.

Some of these are outside the scope of the consultation paper provided. We are of the view that during this time, it is prudent to also raise concerns relating to the regulation more broadly that impact on our members negatively and raise awareness of the scope of practice of Dermal Clinicians and Therapists providing cosmetic and health services using **non-ionising** light-based and LASER techniques. We have limited our discussion to the regulation of non-ionising radiation sources and considerations, including education and training, accreditation and licensing, enforcement and advisory.

Non-Ionising radiation regulation: Light and LASER apparatus cosmetic or therapeutic devices?

The ASDC would like to highlight that for public safety, we feel very strongly that it is essential for this regulation to capture the provision of therapy using non-ionising light and LASER apparatus for **both**

services marketed as 'cosmetic' and 'therapeutic' in purpose. In both of these settings, treatments can alter cellular processes and lead to changes within skin structure and/or function and have the potential to cause injury and harm. In many cases, the apparatus used in both settings includes risks and complications associated with the treatment whether it be cosmetic or therapeutic; it does not seem logical to separate these into cosmetic or therapeutic uses. Or for one to be regulated, while the other to not.

Light and LASER procedures for the majority of Australians are considered 'for cosmetic purposes'. These techniques are also used to correct dysfunction, disorder and disease of the skin. The ASDC takes the standpoint that all techniques, due to the impact on cellular responses, as well as resulting tissue changes with these technologies, are therapeutic and must be considered health services. This is regardless of whether it is to address a 'cosmetic' concern of appearance or a diagnosed medical condition. Therefore in our opinion, these therapies and services no longer act superficially on the skin, nor are the effects solely cosmetic, temporary and completely reversible.

Currently, regulatory bodies view many light and LASER treatments as cosmetic procedures; however, these services are associated with greater risk due to their mechanism/s to cause side effects and adverse events that may also be more significant and long term. Therefore, these services and associated apparatus should be held to standards and regulated because they are a risk to public safety.

Appropriate Models of Regulation

As identified in the issues paper, the cosmetic health services sector is growing and providers of services within this sector are diverse, including non-medical and medical professionals, unregistered and registered, self-regulated and APHRA regulated. Therefore the ASDC is of the opinion that the regulation proposed should be based on a framework or standards of competency, educational requirements, and limitations to the scope of practice through licencing that allows all practitioners to provide these services when requirements are sufficiently demonstrated. This would then have flow-on effects to accreditation of education and training and potential for some restrictions to the purchase of non-ionising light and LASER sources.

At this point in time, a great deal of the danger to the public is associated with providers of these services working outside their scope of practice due to insufficient education and training to understand the risks or adapt to individual therapeutic needs with an understanding of patient factors that can impact on treatment. It is the ASDC's position that sufficient education and training must be provided not only to know how to perform the treatment but also to have sufficient depth of understanding of the tissue effects and responses to identify, prevent and manage common complications associated with providing these services. Currently, this requirement is significantly lacking, with providers being able to purchase a device online, train with video or weekend courses and provide therapies to the public the next day. This includes laypeople from butchers all the way through to medical professionals.

The ASDC represents allied health professionals and industry members of the sector with specific education and training in the science, tissue responses including injury and repair, provision of non-ionising radiation therapies in a wide variety of applications as well as robust education and expertise in prevention and management of common complications. It concerns the profession

greatly that at the current time scope of practice isn't limited and relevant to an individuals education and development of sufficient experience to work safely with the public.

Another consideration is accessibility to purchase these devices by untrained individuals with no requirement to demonstrate sufficient education and experience to operate them.

ASDC proposed considerations for regulation

- Procedures/apparatus should be rated for risk based on the potential for harm and/or long-lasting effects.
- Competencies should be mapped based on this risk assessment. For example, Ablative LASER techniques that remove the entire epidermis require training not only in basic infection control but also in asepsis, wound management, safe operation of the device and provision of the therapeutic procedure including prevention and management of commonly associated complications.
- Educational requirements to be mapped to these competencies and accreditation of programs to provide assurance that they are sufficiently robust to meet competencies. This can offer pathways to education and training to ensure that all members of the sector have opportunities to meet competency requirements if upskilling is required or are entering with different professional attributes of knowledge and skill.
- Licensing based on competency and education level that limits the scope of practice. This would provide mechanisms to ensure safety to the public as although you may have a device that can perform multiple functions you can use what your education, training and experience dictates is within your scope of practice.
- The sale of equipment needs to consider licencing and scope of practice.
- Reporting of incidents and adverse events is required to gather data on the risk associated with these procedures sufficiently. At this time, the information is anecdotal. Development of guidance involves understanding the degree of risk, specific areas of risk, and prevalence to provide adequate support to those providing these services and the public seeking information.

Enforcement: Radiation Control Act - Part 3

At this time, the NSW Radiation Act (1990) provides mechanisms to enforce breaches of the regulation relevant to the use of ionising radiation sources. The ASDC commentary around Part 3 of the Radiation Control Act would be that non-ionising radiation regulation will also need to consider enforcement of regulation. Consequences of improper use of these sources are appropriate as serious harm can and does result, indicating a risk to public safety when not used correctly. Serious harm includes potential risks for eye damage, skin damage including scarring, the inappropriate treatment of skin conditions that can result in problems with the diagnosis of serious underlying medical conditions such as skin cancer as well as work occupational health and safety risks such as inhalation of plume (Town & Godfrey, 2021; ICNIRP, 2020; Qutob et al, 2019).

In answer to the review questions, the ASDC would view that the powers of the EPA and the minister to enforce and administer the ACT are appropriate and could be reasonably applied to the regulation on non-ionising radiation. It is also appropriate that there be penalties including fines and removal of non-ionising devices (sources) from the premises to prevent further injury. With regard to the maximum penalty imposed, the ASDC represents members who are often sole traders or owners of

small private practices, not large corporations. Therefore it is the ASDC's position that the cap of $22,000 per breach does not need to be raised.

Radiation Advisory Council: Radiation Control Act - Part 4

The ASDC have reviewed the establishment, functions, activities and future role of the radiation advisory council. In answer to the review question regarding the appropriateness of the composition of the RAC, we are pleased to see that there is a representative for non-ionising radiation use. The use of non-ionising radiation for cosmetic purposes covers a very broad number of professions from different industry sectors including beauty therapists from the personal service industry, allied health professionals such as Dermal Clinicians as well as registered health professionals including nurses and medical practitioners.

All of these professions have varying levels of government and self-regulatory practices. There is already a significant risk to successful regulation of non-ionising sources if the diversity of this sector is not adequately consulted and represented. This has already been observed with the failure of the 2015 review of the regulation of IPL and LASER devices to achieve recommendations for implementation of regulation even though all stakeholders agreed that regulation is required to address public safety risks.

There must also be transparency on how the appointment of the RAC non-ionising representative is elected. A positive step forward would be ensuring that the 'person with expertise in non-ionising radiation' effectively represents the diversity of the sector and is not a medical health professional, as in our opinion these are already well represented. While outside of the scope of this discussion this may require the establishment of a separate advisory committee composed of professional bodies representing practitioners using non-ionising radiation to provide feedback or nominations for this representation on the RAC advisory. Examples of these stakeholders would include the Australian Society of Dermal Clinicians (ASDC), Cosmetic Nurses Associations (CNA), Australasian Dermatology Nurses Association (ADNA), Aesthetic Practitioners Advisory Network (APAN), Aesthetic Beauty Industry Council (ABIC) as well as medical professional bodies for Cosmetic Physicians (CPSA) and Cosmetic Dermatologists (ASCD).

With regard to activities of the RAC, these appear adequate and reasonable. With regards to the use of non-ionising radiation sources there is a great need to implement incident reporting, data collection and response, the proposed implementation of accreditation of education and training competencies, licencing as well as standardised codes of practice and evidence-based guidance documents. At this time as different professions have varying levels of regulation (APHRA and self-regulation), there is a lack of this guidance that is standard across the sector using these apparatus.

About Dermal Clinicians: Providers of Cosmetic and Health Services using Non-Ionising Radiation Sources

The Australian Society of Dermal Clinicians is an affiliate member of Allied Health Professions Australia (AHPA) as an emerging allied health professional body representing AQF 7 qualified health professionals operating within an evidence-based paradigm.

Dermal Clinicians are allied health professionals with an AQF 7 Bachelor of Health Science with expertise in the assessment and management of the skin in health as well as disease. Dermal Clinicians **as part of** their Bachelor Degree programs, are robustly educated and trained in the scientific theory and evidence-based application of non-ionising light and LASER techniques for skin related applications. This includes many hours of supervised clinical practice. Dermal Clinicians with an AQF 7 qualification can provide therapeutic management of concerns relating to skin health and appearance as well as common skin conditions, disorders and diseases that affect the Australian population.

Dermal Clinicians are independent allied health practitioners. However, they often work collaboratively with GP's, Skin Cancer Medical Practitioners, Dermatologists, Cosmetic Physicians, Plastic Surgeons and Vascular Surgeons, among others. Dermal Clinicians can provide independently (within their scope of practice) therapeutic management of the skin using non-ionising light and LASER apparatus. In some instances, medical professionals will delegate therapeutic interventions to Dermal Clinicians due to their theoretical and practical expertise in providing Light and LASER procedures.

For more information on the education and training of Dermal Clinicians in the Bachelor Degree programs, you can refer to **Appendix 1 - ASDC Education Partners**. This could also further inform 'the regulation' with regard to recognised education for user licencing.

In summary, the ASDC advocates for safety and standards of care for consumers receiving skin therapies and the provision of therapy with an evidence-based approach.

We have provided this feedback as an industry body representing professional skin health practitioners who provide non-ionising light and LASER techniques for skin related applications. We trust that you will consider the above feedback in the review of the NSW Radiation Act (1990).

Kind regards

Jennifer Byrne

Chairperson of the Australian Society of Dermal Clinicians.

Appendix 1 - ASDC Education Partners

Victoria University (Melbourne)- Bachelor of Dermal Science

Victoria University Dermal Clinic - please review procedures performed as part of supervised clinical practice.

Australasian College of Health and Wellness - Bachelor of Applied Health Science (Clinical Aesthetics)

Torrens University - Bachelor of Health Science (Aesthetics)

References

International Commission on Non-Ionizing Radiation Protection (ICNIRP)1 Intended Human Exposure to Non-ionizing Radiation for Cosmetic Purposes, *Health Physics*: May 2020 - Volume 118 - Issue 5 - p 562-579 doi: 10.1097/HP.0000000000001169

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Qutob SS, O'Brien M, Feder K, McNamee J, Guay M, Than J. (2019). Prevalence of laser beam exposure and associated injuries. *Health Rep,* 30(1),3-9. PMID: 30649777.