

Submission Paper for Radiation Control Act Review

The AMA(NSW) welcomes the opportunity to comment upon the Environment Protection Authority's review of the *Radiation Control Act 1990* (NSW) ('the Act'). The AMA(NSW) is committed to promoting the protection, health and safety of the public and wishes to make submissions relevant to the use of currently unregulated treatments.

Non-ionising radiation regulation

33. Should cosmetic laser and IPL sources be regulated under the radiation legislation?

The AMA(NSW) notes the current objectives listed under s 3 of the Act includes the following:

- (1) The objects of this Act are as follows:
 - (a) to secure the protection of persons and the environment from exposure to ionising and harmful non-ionising radiation to the maximum extent that is reasonably practicable, taking into account social and economic factors and recognising the need for the use of radiation for beneficial purposes,
 - (b) to protect security enhanced sources from misuse that may result in harm to people or the environments.

Australian regulations surrounding cosmetic therapy have been termed a 'disparate...minefield'¹ due to the absence of a uniform national regulation which has resulted in the inconsistent use of such therapies across the Australian States and Territories.

At present, New South Wales, along with Victoria, the Northern Territory, the Australian Capital Territory and South Australia do not currently have any licensing regulations in place for the operation and practice of Laser, IPL, HIFU, RF, or Skin Penetration services.² Variability in the requirements for training and licensing to operate cosmetic lasers and IPL sources has the potential to cause misunderstanding and misuse of therapies and could result in adverse outcomes and medico-legal claims from both therapeutic and cosmetic services.

The AMA(NSW) supports the regulation of cosmetic laser and IPL sources under the Act with a view to:

1. providing regulatory consistency;
2. protecting clients and patients during cosmetic procedures;
3. Reducing liability for potential medico-legal claims arising from cosmetic incidents; and
4. establishing a comprehensive framework for practices involved in the cosmetic application of lasers.

We note cosmetic lasers and IPL sources emit non-ionising radiation as defined by s 4(1) of the Act. Accordingly, it would be appropriate to have such equipment, incorporated into this law. Moreover, the fact that the use of such equipment carries with it considerable risk of harm through burns, blisters and scarring, cosmetic lasers and IPLs need to be included in this legislation in order to fulfil the objective stipulated under s 3(1)(b).

¹ Liang Joo Leow, 'Navigating the disparate Australian regulatory minefield of cosmetic therapy' (2017) 46(9) *Aust Fam Physician*, 697-698.

² NSW Environment Protection Authority, State of NSW, [Statutory Review: Radiation Control Act 1990 \(Issues Paper, August 2021\)](#) 50 ('Issues Paper')

Although the current statistics regarding cosmetic laser therapy incidents is scant, data collected from a 2012 survey conducted by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), in conjunction with the Cosmetic Physicians Society of Australasia (CPSA)³ highlights the continued occurrence of complications. The objective of the survey was to provide up-to-date statistics of injuries and cases of mistreatment⁴ to support any future regulatory proposal. Therefore, in the context of the 10-year review of the Act such statistics are considerably relevant.

According to the survey, 137 out of 426 responses received across Australia were from NSW and out of this subgroup, 30 (or 21.9%) had self-reported at least one laser or IPL associated patient injury.⁵ Moreover, training (or lack thereof), was the leading cause of injury for 54% and 90% of incidences with a severe adverse outcome as reported by the practitioner who caused the injury and the practitioner who treated the injury, respectively. Although these statistics are largely 'anecdotal'⁶ and have identified limitations⁷, the reason for these observed trends can largely be attributed to the discretionary nature of the qualification requirements cosmetic clinics impose (or do not impose) on their staff.

The current lack of regulation imposing restrictions and mandatory requirements for these laser-operating clinics means that employers may employ staff who do not have adequate training, thus increasing the potential for laser-related harm. Dr Saxon Smith, then Chair of the NSW Faculty, Australasian College of Dermatologists reiterated this point by stating:

'At this point in time in New South Wales potentially anyone could buy a laser and start using it for whatever reason.'⁸

The AMA(NSW) is of the view adequate regulation through incorporation into the radiation legislation would remove the potentially unsafe discretionary power from practitioners and impose uniform safety requirements to protect patients. While a lack of valid qualification may impact a practitioner's ability to secure adequate medical indemnity or malpractice insurance, this is not a sufficient mitigation strategy to reduce the patient harm associated with these procedures. Therefore, the current exclusion of cosmetic laser and IPL procedures from this legislation, opposes both its definitions and objectives to protect individuals from the harmful effects of non-ionising radiation and prevent the misuse of such equipment.

In addition, from a financial perspective, the lack of regulation in the cosmetic industry has led to an increase in popularity and reliance on home-based salons which have depleted the supply of workers in this sector.⁹ According to the Personal Services Industry Reference Committee's 2019 Skills Forecast, the cosmetic industry has identified:

³ Australian Radiation Protection and Nuclear Safety Agency, [Regulatory Impact Statement Intense Pulsed Light sources \(IPLs\) and Lasers for Cosmetic or Beauty Therapy](#) (Consultation Regulatory Impact Statement, May 2015) ('Regulatory Impact Statement').

⁴ Ibid, 25.

⁵ Regulatory Impact Statement (n 3) 39.

⁶ Ibid (n 3) 37.

⁷ Ibid (n 3) 27.

⁸ Dr Smith, [Transcript of evidence](#), 1 August 2018, 15.

⁹ Personal Services Industry Reference Committee, [Industry Skills Forecast](#) (2019) 8.

‘a need for licencing to return or be reintroduced to the hairdressing and beauty services industries (particularly relating to the use of intense pulsed light (IPL) and laser equipment and cosmetic tattooing).’¹⁰

Therefore, with the growing dynamics of the beauty sector, it is imperative that the regulation also facilitate its growth and protect its practitioners effectively through adequate regulation. This can be achieved by incorporating these procedures into the current New South Wales radiation legislation.

Currently in Australia, laser treatment procedures are regulated in the states of Western Australia, Tasmania and Queensland, however the reach of these laws vary between jurisdictions. If New South Wales is to adopt a legislative requirement or incorporate the cosmetic use of lasers and IPL in the radiation legislation, an overview of these laws must be conducted to determine which aspects are relevant to the aim and objective of New South Wales’ laws.

Tasmania

Tasmania currently imposes licencing requirements for non-medical practitioners operating lasers and IPL for cosmetic use and training obligations for all uses whether medical or non-medical under the *Radiation Protection Act 2005 (Tas)* and *Radiation Protection Regulations 2016 (Tas)*. It is the only state to mandate the need for a licence to operate IPL treatments. The Tasmanian Department of Health and Human Services further requires non-medical operators of these devices to have a documented relationship with a registered medical practitioner who can assess skin lesions with malignant potential and manage adverse outcomes.

Queensland

In keeping with Tasmania, Queensland requires all individuals operating a laser for cosmetic services to possess a 'use licence' and must follow the consultation advice provided from a medical practitioner registered with the Australian Health Practitioners Regulation Agency (AHPRA).¹¹ Separate licenses are required for the possession of such equipment.

Western Australia

Alternatively, Western Australian legislation restricts the use of laser devices to medical practitioners registered with AHPRA and who have attended a laser safety course recognised by the Radiological Council.¹² Non-medical practitioners wishing to operate laser equipment in WA must apply for an exemption from licence.¹³ In this way, there is substantial regulation and effective oversight regarding the use of these non-ionising radiation machines.

Conclusion

Given the impact upon the public, the AMA(NSW) supports legislative regulation of cosmetic, IPL and laser devices to ensure adequate patient safety, cosmetic use of laser and IPL with such regulation to be incorporated into the *Radiation Control Act 1990 (NSW)*.

¹⁰ Ibid (n 8).

¹¹ *Radiation Safety Act 1999 (Qld)* s 13.

¹² *Radiation Safety Act 1975 (WA)* s 25.

¹³ Government of Western Australia Radiation Council, [Fact Sheet for Cosmetic Use of Lasers](#) (April 2021) 1.

34. What model of regulation would be appropriate for these sources – e.g. licensing or training requirements?

The ARPANSA completed and published an analysis in 2017 of public submissions in response to their previous Regulatory Impact Statement¹⁴ which proposed three models of promoting cosmetic laser therapy safety to Australian stakeholders: education, self-regulation and accreditation by the industry or licensing of practices.¹⁵ Identified stakeholders included medical professionals, non-medical operators (beauty therapists), professional associations, laser and IPL device suppliers or manufacturers and state and territory regulators.¹⁶

A detailed analysis of those 241 submissions determined that licensing (or registration) of service providers was the most endorsed position with 52% of respondents supporting licensing regulation in the industry.¹⁷ Under this model, only operators who have undergone appropriate training in order to obtain a license would be able to use the laser and IPL sources. Moreover, the training and qualification requirements would differ depending on the level of risk and harm associated with the procedure or treatment. It is worth noting that 82% of the registered medical practitioners fully supported the suggestion while only 24% of the non-medical operators such as beauty therapists fully supported it.¹⁸

The requirement for licensing to operate any cosmetic laser machinery would inherently include training obligations to obtain and maintain the license. The issue subsequently becomes whether the cost imposed on businesses and employees to implement these requirements are proportional to the risk of harm associated with these sources. These concerns were encapsulated in the 2017 Analysis of Public Submissions, where many stakeholders considered the training levels required to be compliant with the endorsed model to be 'over the top' and restrictive.¹⁹ Moreover, this is reiterated quantitatively as although 38% of respondents did identify improved client safety as the outcome of the proposed changes, others also expressed concerns regarding the cost to the business and the time and cost required to train service providers.²⁰ Potential methods to mitigate these concerns could include the incorporation of grandfather provisions which exempt current beauty therapists and operators from the educational requirements recommended, in recognition of their existing qualifications, experience and safety record.

Through a comparative analysis of the current Tasmanian and Western Australian licensing strategies mentioned earlier, through formal registration, a direct and traceable method can be established for reported laser harm incidents. This enables the relevant state authorities to track incident rates of these cosmetic procedures and therefore simultaneously provides greater insight into the risk of laser therapies and address the concerns that there is incident under-reporting.²¹

¹⁴ Ibid (n 3).

¹⁵ Australian Radiation Protection and Nuclear Safety Agency, [Analysis of Public Submissions: Consultation Regulatory Impact Statement in the use of Intense Pulsed Light \(IPLs\) Sources and Lasers for Cosmetic or Beauty Therapy](#), (Technical Report 117 – May 2015) ('Analysis of Public Submissions').

¹⁶ Ibid (n 17) 7.

¹⁷ Ibid (n 17) 9.

¹⁸ Ibid (n 17) 10.

¹⁹ Ibid (n 17) 9.

²⁰ Ibid (n 17) 14.

²¹ Issues Paper (n 2) 37.