New Zealand Institute of **Environmental Health**

The current regulatory state of the appearance industries within New Zealand

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About the author

Tanya Morrison holds a Bachelor of Applied Science (Majoring in Consumer Food Science, minoring in Marketing) from the University of Otago as well as holding a Post Graduate Diploma in Environmental Health from Massey University. Having worked as an Environmental Health Officer for nearly 14 years, Tanya has always had a particular interest in the appearance industries and the lack of national framework that surrounds them. To extend her knowledge, Tanya obtained a New Zealand Certificate in Sterilising Technology (New Zealand Open Polytechnic) in 2016 and has attended Masterclasses on the appearance industries practices and inspection processes internationally in Australia (2023), and soon to be America (mid-2024).

Through her research into these industries, she has submitted on several Council's review or proposed introduction of bylaws covering these industries and has assisted with training fellow Environmental Health Officers in the inspection of such premises for multiple Councils nationwide. For several years Tanya has also been a guest lecturer at The Otago Polytechnic School of Beauty Therapy to outline what regulatory framework does exists within the appearance industries to current students, as well as guest lecturing for various Environmental Health papers at Massey University. Tanya has been the National President of the New Zealand Institute of Environmental Health (NZIEH) since March 2020.

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Abstract

The appearance industries (broadly covering beauty therapy, skin piercing, and tattooing services) are for the most part unregulated within New Zealand. Though some parts of New Zealand have introduced bylaws to try to introduce minimum standards, the bylaws that do exist are all different and therefore inconsistent in terms of content. This report examines the current landscape within the appearance industries in New Zealand, considering the popularity and evolution of such services including the emerging trends. The actual and perceived health risks associated with these industries have also been explored, to highlight the health risks present and how a lack of national framework is a concern.

Health data from the Accident Compensation Corporation (ACC) has been obtained and reviewed to understand the true health impacts and costs these industries create. This data suggests a rising number of claims are being made year on year in relation to these industries. There are potentially multiple reasons for this, not least of which is the rising popularity, emerging technology and changes within these industries and society itself alongside possibly increased ability to capture such information.

The ability to currently regulate these industries is limited to two key pieces of legislation: The Local Government Act 2022 and The Health Act 1956. Both Acts enable territorial authorities to develop and introduce bylaws for the primary purpose of protecting human health. The Heath Act 1956 also offers enforcement tools for Environmental Health Officers or other delegated professionals, for example when complaints about appearance industry operators are received. These tools have limitations, mainly due to the age of this legislation which no longer reflects today's world, particularly in relation to any punitive measures available.

In the absence of local bylaws, other forms of secondary legislation, health sector reports and guidance along with industry-developed codes of practice and standards are all that exist to try educate and regulate these industries to some degree. The biggest constraint with these documents is that they are rarely, if at all, legally enforceable.

For the bylaws that exist, the majority follow an outcome-focused approach as opposed to incorporating a code of practice within the bylaw itself. The differing approaches overall suggest more recent bylaws introduced have either based their bylaws off one of two earlier introduced bylaws: Dunedin's (Outcomes approach), or Auckland's (Code of practice approach).

What each of the 14 bylaws currently in existence (as of the date of this report) contain, has been analysed in certain areas: overall purpose, scope, and inclusions (including exemptions), physical requirements, training and qualifications, and sterilisation practices. No two bylaws are the same, nor is any one bylaw in the authors opinion the best bylaw overall when compared collectively.

More data and information around the incidence rate of infection and disease spread would help fully evaluate the extent of the current landscape and appetite (politically) for either national legislation to be introduced, or local bylaws to become more aligned and consistent.

Contents

Definitions

ACC	Accident Compensation Corporation
Appearance Industries	Overarching term used to include: **Beauty Therapists** who offer services including (but not limited to): waxing and hair removal techniques, facials, microderm abrasion, chemical peels, epilation, laser treatments including IPL (Intense light pulse treatment), eyebrow tinting and shaping and micro-blading techniques. This group also covers semi-permanent makeup (also known as cosmetic tattooing) and nail technicians (manicures, pedicures, and acrylic and gel nail applications). **Skin piercers** who offer services such as: piercings of ears, noses, tongues, belly buttons and other areas of the body, including dermal piercings **Tattooists** who offer services such as: permanent tattoos, tattoo laser removal
Bylaw	A local law made by a local council or territorial authority
MoH	Ministry of Health
TA	Territorial authority, abbreviated TA, (Local council: includes district councils, city councils, and unitary authorities)

1.0 Introduction

Within New Zealand, there is strong public demand for appearance-focussed services, in particular: beauty therapies, skin piercing procedures and tattoo services. Many companies and individuals provide these services. In this report these services will be referred to as the **appearance industries**.

Many of these practices are hugely popular, but also come with attendant health risks, which if not properly managed, can result in serious harm to both customers and (in some cases) close contacts. Most of these practices are also evolving and are still likely to be increasing in personal and community popularity. Despite the potential for serious harm, most of the time, most appearance services operate under conditions of either no regulatory oversight or limited regulatory oversight.

This existence of adverse health impacts irrespective of location has been a primary driver for development of other national-level regulations including (as two examples) the national environmental standards for ambient air quality[1] and contaminated land.[2]

Unfortunately, such risks of serious harm associated with the appearance industries are not merely theoretical. Rather, adverse events are not particularly rare, and have been occurring for decades.

An overview of these aspects is provided in this section.

1.1 Scope and coverage

The following industries or practices are not directly included in the intended scope of this report or under the use of the term 'appearance industries,' but are discussed where relevant:

- Acupuncturists (non-medical)
- Massage therapists
- Medical personnel covered by the Health Practitioners Competence Assurance Act 2003 including pharmacists who pierce ears, podiatrists, registered nurses (who may administer Botox and other various treatments), physiotherapists, medical acupuncturists and medical tattooists (e.g. for cancer patients etc).
- Hairdressers, who are covered by the Health (Hairdressers) Regulations 1980.

Unlike other areas discussed this report, hairdressers are at least subject to a nationally applicable regulation (secondary legislation) governing hygiene and sanitary practices. These regulations are administered by the Ministry of Health and implemented at the territorial authority level.

These regulations are potentially now outdated because they include practices which may no longer apply. The background as to why these regulations were developed is unknown by the author,

[1] Resource Management (National Environmental Standards for Air Quality) Regulations 2004

[2] Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

however as an example of framework, they are a centrally administered piece of legislation so could be referred to when considering future options for the appearance industries, if not incorporated within a potential new legislative framework, given hairdressing is itself also an appearance industry service.

Traditional tattooing (Tāmoko artists in line with Tikanga Māori customs and Tatau: Customary Samoan tattooing) will also be discussed in this report.

The term 'territorial authorities' refers to city and district councils. New Zealand has 67 territorial authorities comprising 13 city councils, 53 district councils, and the Chatham Islands Council. Six of the territorial authorities also have the powers of a regional council, making them unitary authorities. These are Auckland Council, Nelson City Council, Gisborne, Marlborough, and Tasman Districts, and the Chatham Islands Council.

1.2 Overview of the appearance industries

1.2A Presence and popularity – the example of tattooing

The situation with tattooing serves as an example of popularity and introduction to some hazardous aspects of appearance industry procedures. According to a commonly referred to study undertaken in 2010 by the Pew Research Centre, 40% of millennials had at least one tattoo.[3] Though styles change, the popularity of tattooing remained strong or grew among Gen Z, and is likely to continue in Gen Alpha.[4] Tattoos specifically have risen in popularity in the last two to three decades and are no longer viewed as only for sailors, prisoners, gangs, or lower-class people. Nowadays, tattoos and other services within the appearance industries have a higher focus around art and overall beauty. More females seem to be getting tattoos, which also helps make tattoos more mainstream and less masculine, also creating a greater sense of community and a demonstration of a person's identity. With increased use of social media and various other non-traditional media platforms, access to celebrities has also likely contributed to people wanting to emulate and aspire to what famous people have experienced as well.[5]

Along with an increase in popularity of services received, including tattoos, so too has there been an increase in reversal procedures, especially laser tattoo removals due to tattoo regret. FashioNZ claim that tattoo removal services have risen over 440% in the past 10 years with New Zealand being per capita, the most tattooed nation in the world.[6]

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3 Nichol, Tess., 21/01/17. New Zealand Herald; How getting a tattoo became so mainstream. Available from: https://www.nzherald.co.nz/lifestyle/how-getting-a-tattoo-became-so-mainstream/DMQTMTDAAHBM2TTW7FTF6F3QZY/ Accessed 27/08/23.

4 Lloyd, Andrew., 20/09/23. Article in Business Insider; Artists break down Gen Z tattoo trends — which may be deeply uncool by the time Gen Alpha starts getting inked. Available from: https://www.businessinsider.com/popular-tattoos-gen-z-outdated-gen-alpha-2023-9 Accessed 29/01/24.

5 Nichol, Tess., 21/01/17. New Zealand Herald; How getting a tattoo became so mainstream. Available from: https://www.nzherald.co.nz/lifestyle/how-getting-a-tattoo-became-so-mainstream/DMQTMTDAAHBM2TTW7FTF6F3QZY/ Accessed 27/08/23.

6 Blog post from 06/12/21. FashioNZ; Tattoo removal is on the rise. Available from: https://www.fashionz.co.nz/tattoo-removal-is-on-the-rise/ Accessed 27/08/23.

To become a tattoo artist does not require a qualification. Any person can search via the internet and obtain not only the equipment required at relatively cheap prices, but via online videos and the like, can 'learn' how to tattoo then essentially open a tattoo shop, sometimes from home and begin operating and tattooing members of the public.[7] What determines when a person has become a tattooist and graduated from being an apprentice, is down to whoever has 'trained' that tattooist. In the author's experience in inspecting tattooists for over 10 years, apprenticeships may range from 3 months to 3 years before that trainee is 'allowed' to tattoo a person (unsupervised) and charge for their services (as opposed to practicing on family and friends).

There are further concerns which have been raised by Ministry of Health previously around the unrestricted importation of tattoo ink (via the internet) and therefore the uncertainty of the chemical composition and sterility of the ink. The main concerns with tattoo ink relate to possible presence of heavy metals, and/or potentially toxic organic compounds such as polycyclic aromatic hydrocarbons, poor sterility, and inadequate labelling.[8] There are ties to the Hazardous Substances New Organisms Act 1996 (HSNO), and (pursuant to HSNO section 96B) the Tattoo and Permanent Makeup Substances Group Standard 2011 in terms of trying to provide guidance on the nature of compounds that should not be present within tattoo inks. These include chemicals that show inherent acute toxicity, irritancy (to skin or eyes), corrosivity (to eyes) or ecotoxicity. Risks of chronic toxicity are omitted. More significantly, this regulation is silent on microbial risks – because except for modified organisms, risks of harm from infectious pathogens are outside the scope of HSNO.

The lack of national legislation and limited number of bylaws in place within New Zealand, essentially mean there is also a lack of monitoring. In the absence of a national framework, it would be hard to quantify the true extent of health risks and adverse health events associated with all appearance industries. It is also difficult to establish which procedures carry the greatest potential for serious harm. However, it seems likely that tattooing arguably carries the highest overall risk of all the appearance industries. This is because of the nature of the procedures involved, their popularity, the wide variability in practitioner training, relatively large dermal wound areas that are often involved, infectious complications that can arise during healing, and the absence or patchiness of controls that would be needed to guarantee hygiene and sterility of both procedures and inks.

As the popularity of these industries increases, so too does the potential for community spread of infection and disease if some control measures or basic regulation framework is not applied. The current bylaws in existence may or may not adequately address or provide suitable control measures for infection control practices around cleaning, sanitation, and sterilisation but arguably some form of control is better than none.

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7 Ockhuysen, Stephanie 07/02/20. Stuff article: The state of the industry: From tattooing fisherman and scaffolders to anyone and everyone. Available from: http://www.stuff.co.nz/taranaki-daily-news/news/118938909/the-state-of-the-industry-from-tattooing-fisherman-and-scaffolders-to-anyone-and-everyone. Accessed 27/08/23.

8 Ministry of Health presentation July 2015: New Zealand Regulatory Approach to tattooing. Available from: http://mobil.bfr.bund.de/cm/343/new-zealand-regulatory-approaches-to-tattooing.pdf Accessed 27/08/23.

1.2B Evolution of services and popularity

Although no up-to-date data is available, several formal and informal sources speak to the increasing social acceptability and popularity of services offered by the appearance industries and the lack of regulation.

Tattooing

According to a Wellington City Libraries blog from 2022, there were only two professional tattooists in New Zealand in 1969.[9]

According to New Zealand Census statistics, there were 423 tattoo artists within New Zealand in 2018.[10]

According to an article produced by Tattoo Station on 26 April 2018, one in three New Zealanders under the age of 30 have a tattoo. This is one of the highest rates in the world for being tattooed. Yet as the article explains, despite this high prevalence of tattoos, there is no national regulation for the tattooing industry. It is very much a self-regulated industry whereby adherence to any available guidelines is therefore completely voluntary.[11]

In 2019, the New Zealand Police and Air New Zealand both moved to allow visible tattoos on staff members (providing the tattoos were not offensive, rude or would incite hatred or be on certain parts of the body such as hands or face).[12] This shows that only recently, some of the historic perceptions around tattoos and body art have relaxed as the popularity and mainstream nature of tattoos in particular increase; so much so that in the current day, many taboos of old and the stigma associated with body art are both lessening in many respects.

Beauty therapies in general

In a report produced on 13 June 2012 by HITO (New Zealand Hair and Beauty Industry Training Organisation), the beauty therapy industry in New Zealand is growing, with 3,850 business in the hairdressing and beauty services industries as of December 2010. This represented a growth of 12% from 2006.[13] Given the date of this report, and population growth, it is fair to assume the number of

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9 Business blog by Linda, 15/12/22. Wellington City Libraries; Available from: http://www.wcl.govt.nz/blogs/business/index.php/2022/12/15/skin-deep-talking-about-tattooing-in-wellington-part-1 Accessed 04/09/23.

10 Careers.govt.nz website: Tattoo Artist Job profile. Available from: https://www.careers.govt.nz/jobs-database/retail-and-personal-services/hair-beauty/tattoo-artist/ Accessed 04/09/23.

11 Tattoo station news article, 26/04/18. Available from: https://www.tattoostation.co.nz/blogs/news/tattoo-ink-and-new-zealand-law Accessed 04/09/23.

12 Business blog by Linda, 21/12/22. Wellington City Libraries; Available from: http://www.wcl.govt.nz/blogs/business/index.php/2022/12/21/skin-deep-talking-about-tattooing-in-wellington-part-2 Accessed 04/09/23.

13 Education & Training in the New Zealand Beauty Industry – A Landscape report, 2012. Available from: https://www.hito.org.nz/wp-content/uploads/2017/02/draft-beauty-landscape-report-13-june-2012.pdf Accessed 04/09/23.

beauty therapy related businesses has significantly increased to the present day, in keeping with the popularity and demand for such services.

Skin piercing

The Medical and Scientific Sub-Committee of the National AIDS Council first developed skin piercing guidelines in 1989 in response to AIDS and hepatitis infection rates rising, acknowledging many infections like this arise via infected blood transmission. These were revised and updated to the current Guidelines for the Safe Piercing of Skin, published in 1998 by The Ministry of Health, which noted that skin piercing in New Zealand was becoming increasingly popular. Between 1989 and now (2024) popularity only appears to have further increased. In relation to the regulatory environment, the same (1989) guidelines note that in the absence of national regulations, some territorial authorities had begun developing bylaws essentially to foster good practice, increase operators' standards and minimise infection.[14]

Furthermore, the guidelines outline that under the Health Act 1956, territorial authorities are obliged to improve, and protect public health within their districts. The Act empowers them to regularly inspect their districts for nuisances or conditions that may exist that are likely to be injurious or offensive to health.[15]

1.2C Changes in technology

One challenge for future-proofing regulations and bylaws is that practices can significantly change over time. From personal experience and observations as an Environmental Health Officer over 13 years, and taking the tattooing industry as example, many changes have occurred in how tattoos are applied, and the equipment/technology used for tattooing has evolved.

Some examples of observed changes in tattooing processes include:

- A move away from traditional coil-based hand pieces to new wireless and sometimes Bluetooth-capable battery-operated handpieces.
- With the change towards wireless handpieces comes the introduction of cartridge systems, where the single use needle(s) are included already within a disposable grip and tip unit able to be inserted into the handpiece. Such cartridge systems generally allow for less risk of ink backflow into the handpiece itself compared to more traditional coil-based handpieces, with the handpiece itself being essentially all enclosed, resulting in less exposed moving parts from a bacterial harbourage minimisation and sanitation perspective.
- Movement towards all single-use products (in addition to needles which have long been generally accepted as needing to be single-use): Grips, tips, ink caps etc can all be single-use, which reduces, if not eliminates the need for autoclaves to be used to the same degree as previously.

[14] Ministry of Health Guidelines for the Safe Piercing of Skin 1998, 'What is the current situation in New Zealand' Page 6

[15] Ministry of Health Guidelines for the Safe Piercing of Skin 1998, 'What is the current situation in New Zealand' Page 7

- Conversely, there is a counter movement towards being more sustainable: e.g. using paper ink caps as opposed to plastic ink caps, using stainless steel barrels, grips & tips which can all be autoclaved and re-used, exploring ways to reduce plastic wrap (used to cover work surfaces) or use more biodegradable versions of wrap where available, exploring alternative 'wrapping' options for aftercare such as using second skin products compared to gauze pads/absorbent dressings and/or cling wrap.
- A move towards more sustainable, skin friendly, and natural aftercare products, including vegan based products.
- Utilising technology to book appointments, communicate with clients and provide aftercare advice.
- The increase of the 'slow tattoo' movement, also known as the 'poke' technique (whereby an artist manually penetrates the skin with a needle and ink compared to the use of a powered oscillating handpiece).

1.2D Industry changes

As an observation, the tattooing industry alongside all appearance industries has become progressively more professional over recent years. The expectation for quality work and artistry, coupled with the desire to be professional and well educated around the practices and services offered appears to have seen the level of self-regulation increase. The presence of social media also allows clients to explore their options like never before, exploring not only examples of artists' work, but feedback received from other clients. According to New Zealand Census statistics, there were 423 tattoo artists within New Zealand in 2018, with approximately two-thirds of these being self-employed.[16] Based on personal observation and the ongoing popularity of tattooing this figure is likely to be higher now than it was in 2018.

From observations of working in a local authority with a long-standing bylaw covering these industries, those who are registered under the bylaw and 'play by the rules' are also quick to notify Environmental Health Officers (EHOs) when a new (unregistered) business appears on social media and is not playing by the same rules.

Despite increased professionalism among long-standing operators, there may have also been an increase in unskilled, inexperienced, or solo or amateur practitioners becoming involved in the industry. An article from Stuff.co.nz in March 2019 entitled 'Calls for safety regulations governing tattooing, body piercing outlets and nail bars' highlighted Lower Hutt tattooists supporting a 'crack down' on unhygienic operators, including 'scratchers' – tattoo artists who work from their homes.[17] The article highlighted concerns from within the tattooing industry of fixing up poorly executed tattoos and mentioned the increased risk people would be taking by getting tattoos within someone's home.

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[16] Careers.govt.nz website: Tattoo Artist Job profile. Available from: https://www.careers.govt.nz/jobs-database/retail-and-personal-services/hair-beauty/tattoo-artist/ Accessed 04/09/23.

[17] Boyak, Nicholas. 10/03/19. Calls for safety regulations governing tattooists, body piercing outfits and nail bars. Article on Stuff.co.nz. Available from: https://www.stuff.co.nz/national/health/111093069/calls-for-safety-regulations-governing-tattooists-body-piercing-outfits-and-nail-bars Accessed 04/09/23.

The article also made mention of the number of tattooing kits and equipment available for purchase via Trade Me, with 1200 items listed (a 28 percent increase on the year before) as of the time the article was published. The sale of tattoo equipment was then (and is still) allowed on Trade Me, however the sale of tattoo ink is not allowed after this was banned in 2010 after concerns that some inks could be unsafe. The article quoted that tattooing kits could be purchased online for as little as $47.[18]

The author conducted a search on Trade Me on 4 September 2023 and found a range of tattooing and skin piercing kits available online, the cheapest (full) kit observed to be an 84-piece skin piercing kit (including nose spikes, round mouth open pliers, diagonal pliers, 10X puncture needles, gloves, and alcohol wipes) available for $13.99 + shipping within New Zealand. Currently (at time of writing) the most inexpensive tattoo machine kit available on Trade Me costs even less ($40.99), and most full kits are in the range $80-150 depending on the number of accessories. Disposable cartridge needles are retailing at about $40 for a pack of 20. These results highlight the cheap availability of tattooing and skin piercing kits and accessories, which are available for anyone to purchase regardless of whether they have acquired any expertise around the use of such equipment, and no evident requirements for vendors to demonstrate or prove the quality and sterility of such kits before purchase.

Changes in beauty therapy services offered have generally extended in recent years beyond simply waxing, facials and nail services. Other services now commonly offered include (but are not limited to) microderm abrasion, microblading, threading, eyelash extensions and tinting, laser treatments including IPL (Intense Pulse Light therapy), epilation, manicure and pedicure treatments, foot spas and even teeth whitening which seems to be growing in popularity in recent times through observation. According to Census data, 5,274 Beauty therapists worked in New Zealand in 2018.[19] There is a strong likelihood this number is even greater in the current day.

Skin piercing too is advancing beyond what historically might be seen as a basic piercing of the ear, nose, tongue, or belly button. Now dermal planting and piercing other areas of the body are growing in popularity too, as is the concept of stretching (typically earlobes).

With the rise in popularity of all appearance industry services, comes an increase in supply with increasing numbers of establishments opening and offering such services nationwide. The increase in competition results in consumer choice, a wide variety of services offered (including varying degrees of how well such services are offered), but most importantly more choice in the market makes these services more accessible and affordable.

There are also the social pressures to consider of people being influenced by media (in multiple formats) pressuring them to look a certain way, which can feed the growing demand and popularity of these industries. For example, reality television shows which portray competitions amongst tattooists have changed how tattoos (and services by the wider appearance industries) are viewed. With greater media attention and coverage, comes exposure and increased awareness and arguably a rise in demand. Though this correlation is probable, it would be hard to definitively quantify. From

[18] Boyak, Nicholas. 10/03/19. Calls for safety regulations governing tattooists, body piercing outfits and nail bars. Article on Stuff.co.nz. Available from: https://www.stuff.co.nz/national/health/111093069/calls-for-safety-regulations-governing-tattooists-body-piercing-outfits-and-nail-bars Accessed 04/09/23.

[19] Careers.govt.nz website: Beauty Therapist Job profile. Available from: https://www.careers.govt.nz/jobs-database/retail-and-personal-services/hair-beauty/beauty-therapist/ Accessed 04/09/23.

a simple economics perspective of supply and demand, demand is likely to have driven the rise in supply or number of premises offering these services in recent years.

Cost remains a key factor in these industries. With changes to the cost of living, these services may be perceived as luxury items as opposed to necessity items so supply and demand (like any commodity) is relevant to these industries. From a public health perspective cost is also relevant as often price is an indicator of quality, even if that quality does not correlate with sanitation practices but is instead based on customer service or skill of the artist. The adage 'good isn't cheap, cheap isn't good' perhaps has some relevance to the appearance industries. For every person on a budget, however, or not wishing to spend much money to receive some services, there is an increased likelihood that customers may seek out services offered either by unregistered, or lower-end providers which may expose them to greater unnecessary health risks.

The accessibility of these services is also increasing, with many workers from within the appearance industry often travelling and undertaking 'guest spots' in other studios throughout the country, or appearing at events such as expos, markets, gypsy fairs etc. It is also common to see services combined, such as tattooists operating from hairdresser or barber shops – either for convenience and/or to assist in lowering overhead costs of trade. As services such as these are combined, the health risks may also increase, because there is higher likelihood of cross-contamination where multiple services are occurring under one roof.

1.2E Emerging services including body modification

With the increase in media coverage and accessibility of services and as the appearance industries become more and more mainstream, so to comes the rise in popularity of new services, including body modification. Around the world, body modification services are now seen more and more within the appearance industry profession, such as amongst tattooists and skin piercers. Different procedures such as implants, scarification, tongue splitting, eyeball tattooing, and the reforming of skin to change one's appearance such a belly button removal, pointing of ears (known as elf ears), and more commonly the stretching of ear lobes are increasing in their prevalence, and are just the tip of the iceberg.

The author knows of one skin piercer who contacted them after a client requested an electronic chip be placed in their hand. In this instance, the piercer declined the request, concerned about their reputation should they begin using scalpels and essentially undertaking semi-medical procedures by inserting such items into a person's body. Worldwide there are widely reported cases of when such procedures (and more extreme examples of body modification) have ended in tragic circumstances.

One such example is the 'Snowflake death' from New South Wales, Australia, whereby a tattooist known as 'B-slice' started undertaking what the judge described as 'Quasi-medical procedures' which ultimately lead to the death of a young woman following an infected snowflake implant in her hand which became infected and led to septicaemia, ultimately ending her life.[20] The tattooist was

[20] McKinnell, Jamie. 16/11/21. ABC News article, Available from: https://www.abc.net.au/news/2021-11-16/nsw-body-modifier-brendan-russell-guilty-of-manslaughter/100623364?utm_medium=content_shared&utm_source=abc_news_amp&utm_campaign=abc_news_amp&utm_content=mail Accessed 03/09/23.

sentenced to 10 years imprisonment in July 2022 for manslaughter charges due to gross negligence and other claims of body mutilation.

There are also other examples of people losing their eyesight due to getting their eyeballs tattooed. Two well published cases of this are a young model from Poland who completely lost her eyesight[21] and a 33-year-old woman from Northern Ireland who is now losing her eyesight in both eyes after being diagnosed with sarcoidosis, essentially meaning the woman is unable to fight off the bacterial infections her body experiences due to receiving the eyeball tattoos.[22]

Although these adverse health outcomes came about through new or unusual procedures, the health risks of more conventional and common procedures can be just as serious. Further discussion of these is provided in the following section (Section 1.3).

As many of these procedures and techniques are relatively new, it is difficult to fully assess the possible health risks, including long-term health risks that may arise from such procedures. There is also a lack of trained medical personnel who specialise or advertise performing such procedures, likely through fear of jeopardising a medical licence. Medical procedures also may require additional precautionary steps such as detailed informed consent and/or anaesthetic to be applied, which non-medically trained personnel should not be administering.

Therefore, body modification services remain unregulated in general. The lack of medically trained persons to undertake such procedures, may result in such procedures becoming more 'underground' and the likes of some tattooists, skin piercers or the like attempting such procedures without adequate training, knowledge of potential health risks, suitable equipment, sterilisation practices being in place or adhered to, or having a suitable physical environment to conduct such procedures.

1.3 Potential Health risks

For many of the practices carried out in the appearance industries, aspects exist which if not managed properly, have a proven capacity to harm customer health. The public health consequences of poor hygiene and practice can range from mild nuisance to severe disability and even death, and can come about through viral or bacterial infection, direct toxicity, chemical irritation, and/or a mild to severe allergic response. The range of potential exposure pathways include entry at a wound (piercing or intradermal tattoo) site, dermal absorption, inhalation, leaching from an implant, and for some procedures (*e.g.* receiving a tongue tattoo) unexpected ingestion.

Many communicable diseases, sources of infection and injuries that impact a client's quality of life can result from services performed by persons trading within the appearance industries. Of particular concern are those diseases and infections resulting from blood-borne infection such as hepatitis and HIV.

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[21] Jain, Sanya. 03/03/20. NDTV.com article, Available from: https://www.ndtv.com/offbeat/model-loses-eyesight-after-getting-eyeballs-tattooed-black-2189043 Accessed 04/09/23.

[22] Lloyd, Sophie. 27/07/23. Newsweek.com article, Available from: https://www.newsweek.com/woman-losing-sight-eyeball-tattoos-no-regrets-1815676 Accessed 04/09/23.

The Ministry of Health's Customary Tattooing Guidelines 2010 State the following in relation to hepatitis C and B and HIV:

> "Hepatitis C is a blood-borne virus. It can cause long-term illness and can result in liver damage and lead to cancer of the liver. There is no known cure for hepatitis C; nor is there a preventive vaccine. Most people infected with hepatitis C in New Zealand have contracted the virus by using injecting equipment, or from contaminated blood transfusions conducted before blood screening was available.
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> Symptoms of acute hepatitis B include tiredness, malaise, jaundice, and an inflamed and often painful liver. The infection can also result in long-term illness, including liver damage and liver cancer. Hepatitis B can be transmitted by blood on instruments used for tattooing procedures and through poor hygiene.
>
> HIV is the virus that causes AIDS. Skin piercing poses the risk of contracting HIV. At present there is no vaccine against HIV/AIDS and no cure. Safe and hygienic practices minimise the chance of transmission during tattooing."[23]

Other possible infections can arise through bacterial or fungal infection, often from poor hygiene, cleaning, disinfection or sterilisation practices or some other form of cross-contamination. The use of lasers has the potential to cause burns and other tissue scarring, and other services could potentially cause bleeding or seepage of bodily fluids which result in infection transference. Persons with compromised immune systems or health concerns are at higher risk of infection with the consequences of such infections and disease often being lifelong, if not life threatening.

Allergic reactions also need to be considered from appearance industry procedures, for example reactions from nail cosmetics – polish, cuticle removers, artificial nails etc.[24] Multiple skin infections may also occur, for example dermatitis, inflammatory reactions, eczema, fungal infections, sepsis, tetanus, and reactions to compounds within tattoo inks.[25]

The use of non-sterile tattoo inks has been linked with both local and systemic serious bacterial complications, from localised abscesses, to necrotizing fasciitis, endocarditis, and septic shock.[26]

There have been numerous media reports over the years of issues arising from appearance industry premises, such as infections arising from nail salons and treatments such as eyebrow tinting. One online article and TV interview from Newshub in 2019 interviewed an executive member of the New Zealand Association of Registered Beauty Therapists (NZARBT), who called for industry training, regulation, and penalties for when things go wrong. In context, this article highlighted a woman who had received a 'botched' eyebrow job following a microblading procedure. The NZARBT

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[23] Ministry of Health Customary Guidelines for Tattooing 2010. Available from: https://www.health.govt.nz/publication/customary-tattooing-guidelines-operators Accessed 03/09/23.

[24] Ngan, Vanessa. 2012. DermNet New Zealand article, Available from: https://dermnetnz.org/topics/nail-cosmetics-allergy Accessed 03/09/23.

[25] Ngan, Vanessa. 2005. DermNet New Zealand article. Article updated by Dr Elghblawl, Ebtisam. November 2019. Available from:https://dermnetnz.org/topics/tattoo-associated-skin-reactions Accessed 03/09/23.

[26] Dieckmann, R., Boone, I., Brockmann, et al. (2016). The risk of bacterial infection after tattooing: a systematic review of the literature. Deutsches Ärzteblatt International, 113(40), 665. Available from: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5290255/ Accessed 04/09/23.

spokeswoman said in the interview "Right now anyone can pick up a blade and claim to be a microblading specialist, leaving botch-up jobs to experts (like me) to try and fix".[27]

Another Newshub article and televised interview was in relation to a cellulitis infection gained following a treatment at a walk-in nail salon, where again a NZARBT spokeswoman was interviewed. This story highlighted how podiatrists within New Zealand need to be registered and fall under the Health Practitioners Competence Assurance Act 2003, whereas many nail salons who offer similar (if not some of the same) services, do not need to be registered (unless covered by a local bylaw). Without being registered, these premises are not regulated in anyway which Podiatry New Zealand was quoted as saying "There is an appalling lack of infection control at many cheap, unhygienic, nail salons which continue to operate without regulation" with a further comment of "These are cheap services for a reason, they're taking shortcuts".[28]

In June 2022, a report was published by the Deputy Health and Disability Commissioner (Case 19HDC02118) which considered the care provided to a woman by a beauty clinic in October 2019, where the woman sustained an injury following the treatment (intense pulsed light (IPL) hair removal treatment). The findings of this report were that the woman was not provided sufficient information to make an informed choice about the procedure she was to receive and the clinic in question was in breach of Auckland Council's Health and Hygiene Code of Practice. The Deputy Commissioner then made recommendations to the clinic in relation to issuing a formal apology to the woman as well as undertaking further training and the creation of policies for staff to follow and ensure compliance with the bylaw (and code).[29]

An AUT University article in Te Waha Nui, AUT's student journalism publication, from June 2016 outlined a woman's experience of having her eyes glued shut during a botched eyelash extension and called for regulations to ensure only qualified beauticians can operate in salons. The article quoted a salon operator who said, "Because there are no regulations or structure in the industry, there's more people doing it who shouldn't be doing it, rather than people who are educated".[30]

As a single example of chemical toxicity incident from the serious end of the spectrum: in 2001 a specialist in appearance medicine was fined $30,000 at the High Court in Christchurch after his patient, Leanna Steven, died three weeks after suffering a cardiac arrest while undergoing a face-peel treatment using a product containing phenol, some of which was dermally absorbed.[31]

A New Zealand Herald article from August 2014 entitled 'Ugly side of the beauty industry' even then attempted to highlight the 'dozens of complaints about poor hygiene and dangerous practices'

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[27] Lewis, Lydia. 10/08/19. Newshub article, Available from: https://www.newshub.co.nz/home/lifestyle/2019/08/calls-for-regulations-consequences-to-avoid-eyebrow-botch-up-jobs.html Accessed 03/09/23.

[28] Farrell, Sam. 28/03/19. Newshub article, Available from: https://www.newshub.co.nz/home/lifestyle/2019/03/serious-infections-caused-by-unhygienic-nail-salons-prompt-calls-for-national-standards.html Accessed 03/09/23.

[29] Deputy Health and Disability Commissioner report, 29/06/22. Available from: https://www.nzdoctor.co.nz/sites/default/files/2022-10/Beauty%20clinic%20decision%2019HDC02118.pdf Executive Summary, page 1. Accessed 03/09/23.

[30] Leroy, Frankie. 02/06/16. Horrific risks in current unregulated beauty industry. Available from: https://tewahanui.nz/health/horrific-risks-in-current-unregulated-beauty-industry Accessed 03/09/23.

[31] New Zealand Herald, 16/08/01. Doctor fined $30,000 in face peeling death. Available from: https://www.nzherald.co.nz/nz/doctor-fined-30000-in-face-peeling-death/VCXYEROVGVI7VS2VWEQ32FAAME/ Accessed 24/01/24.

within Auckland's beauty industry. The article goes on to state that "Reports of hepatitis, scabies, infections and cockroach infestations were among 87 complaints regarding hygiene practices at health and beauty premises dealt with by Auckland Council since 2008".[32]

Though this article was dated shortly after the introduction of Auckland Council's Health and Hygiene Bylaw 2013, it highlights that the concerns about the wider appearance industries within New Zealand being unregulated is not a new concern. There are countless examples accessible via the internet and social media of customers' poor experiences and health problems that have arisen from undertaking services from premises that are unregulated.

Exact data is difficult to obtain which specifically attributes any illness, infection, or acquisition of a communicable disease directly to appearance industry procedures or premises. This is because there is often other underlying health conditions and symptoms associated with possible detrimental effects, for example any claims made to Accident Compensation Corporation (ACC) which are generally more accident-based and could be attributed more so to persons undertaking procedures, not receiving them. WorkSafe New Zealand details on their website the risks that tattooists and skin piercers should consider and how they can minimise, if not eliminate possible risks for infection and transference of communicable diseases to occur.[33]

There is also the potential in the author's opinion of people not complaining or being aware of who to complain to when a possible complication or adverse health affect arises after a procedure. Aftercare advice should be provided as an example for many higher risk procedures (where skin is broken), however how well people follow aftercare advice is always subjective.

1.4 Regulatory environment in general terms

Despite the public health risks, within New Zealand currently, none of the appearance industries, with the exception of hairdressers, have any national legislation or framework governing their operations. This means that in essence, a new beauty therapist, skin piercer or tattooist can begin a business and there are no national requirements to be met in terms of public health, hygiene, or sterilisation practices.

Several territorial authorities within New Zealand have introduced local bylaws with the aim of setting minimum standards in terms of hygiene and sterilisation and protecting public health. Of bylaws currently in existence, there is quite a variance in approaches as to what each covers in terms of scope, detail and requirements of those businesses needing to register and abide by.

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[32] Tait, Morgan. 02/08/14. New Zealand Herald Article: Ugly side of the beauty industry. Available from: https://www.nzherald.co.nz/nz/ugly-side-of-the-beauty-industry/OCZWTQLP7I7DP2D3EUVD55L7ZY/ Accessed 03/09/23.

[33] Worksafe New Zealand website: What risk looks like in your industry: tattoo shops. Available from: https://www.worksafe.govt.nz/managing-health-and-safety/managing-risks/what-risk-looks-like-in-your-industry/tattoo/ Accessed 03/09/23.

Bylaws are in essence a tool written by local authorities to address local problems.[34] However, for the appearance industries, there is a strong case that a unified national regulatory approach would be more appropriate, because the nature of health risks arising from poor practice are the same throughout the country. Infections or other adverse events can occur no matter where a person resides if basic standards and practices are not adhered too.

However, the only national document which introduces minimum hygiene standards that currently exists within New Zealand (excluding hairdressers) is the Ministry of Health's Guidelines for the Safe Piercing of Skin 1998.[35] These guidelines came about as a response to an historic medical event (the AIDS epidemic) rather than any specific focus on health protection in the appearance industries; they updated and expanded on the 1989 Skin Piercing Guidelines prepared by the Medical and Scientific Sub-Committee of the National AIDS Council. As they are guidance, they do not in themselves set any legal requirements – although they may be used as a source of provisions to set legal requirements in local bylaws, and in the event of a prosecution could be used as a point of reference to define an expected (or best-practice) standard of care.

In terms of positives, the guidelines do provide a framework or minimum standard for hygiene practices, in the absence of other national guidance. However, their downside (in addition to lack of inherent legal status) is that they are focused predominantly on infection control in the context of the piercing of skin, which is only a subset of health risks associated with services offered by the appearance industries at large.

The lack of national legislation for the appearance industries, especially those which involve skin penetration, is a large limitation for these industries currently within New Zealand. Sixteen territorial authorities under fourteen bylaws (Wairarapa being a consolidated bylaw covering three authorities: South Wairarapa, Masterton and Carterton areas) have introduced bylaws, all of which have been introduced within the last 20 years. The practices undertaken by the appearance industries are not entirely new nor have they only been introduced in the last 20 years. Tattooing and skin piercing for example along with many beauty therapy practices have been around for many decades, even centuries in the case of tattooing and skin piercing.

Territorial authorities have introduced these bylaws to try to regulate these growing industries and minimise potential harm and risk to human health, brought about by the spread of communicable diseases and infections. In the absence of such a bylaw, the only other relevant legislation is the Health Act 1956 which is outdated in many parts (especially with regards to penalties upon conviction), as well as being very general in its requirements. To have meaningful impact, health requirements really need to be specified and tailored to a higher level of detail. This can only be provided in secondary legislation: either as a national regulation (drawn up under the provisions of the Health Act 1956) or as a local authority bylaw. In the absence of any national framework, international resources are commonly referred to and relied on, for example within industry for staff

[34] Provisions for making bylaws are set out under various acts, but centrally the Local Government Act 2002 (sections145-148), and (particularly for this context) the Health Act 1956. For an outline, see: https://www.huttcity.govt.nz/council/how-council-works/laws-and-bylaws/how-we-create-bylaws

[35] Ministry of Health, 1998. Guidelines for the Safe Piercing of Skin. Available from: https://www.health.govt.nz/system/files/documents/publications/skinp.pdf

training through organisations such as the Association of Professional Piercing (California based, USA) who offer online training and support.[36]

Consistency is another limitation – not all parts of New Zealand are equal for these industries or members of the public who wish to partake in any service offered by these industries. The risk of possible infection around the country differs simply due to the lack of regulations and enforcement occurring – if no framework or minimum requirements exist, how can consumers be confident the services they choose to receive are undertaken in a safe and responsible way? Risk therefore varies depending on geographic location but having a level playing field amongst industry operators also varies as depending on where you choose to live and work, determines what (if any) framework, and rules you need to play by.

1.5 Aims of this study and report outline

Within the wider context of health-risks associated with the appearance industries, the aims of this study were to:

1. **Explore information that may already exist that would help to quantify a proportion of adverse events, in aggregate.** This part of the work involved analysis of claims made to the Accident Compensation Corporation (ACC) over the 5-year period 1 July 2018 to 30 June 2023 (see **Section 2**)

2. **Provide an overview of current regulatory settings and instruments** (see **Section 3**)

3. **Undertake a detailed inventory and comparison of existing bylaws** (see **Section 4**)

A **summary of the findings**, and **recommendations of this work**, are provided in **Section 5** of this report.

[36] The Association of Professional Piercers - Safe piercing.com website. Available from: https://safepiercing.org/ Accessed 03/09/23.

2.0 ACC Official information request data

Within New Zealand, most accidents and injuries may be covered by ACC: Accident Compensation Corporation. Medical professionals link to ACC by way of claims (where relevant). Therefore, in terms of sourcing any data which may show the extent of injuries or give insight into the adverse health effects caused or attributed to the appearance industries, ACC is essentially the only real source of potential information currently available.

2.1 Limitations and approach

The first aim of this study was to explore information that may already exist that would help to quantify adverse health events that can be linked with the appearance industries, in aggregate.

In this area there are several barriers to estimating the actual harms that may be being caused by poor practices in the appearance industries, some of which were mentioned above. Barriers to such reporting may include:

- variability in severity of symptoms,
- willingness, unwillingness, or lack of awareness among customers,
- whether medical assistance is sought,
- medical confidentiality,
- the primary clinical focus on treatment, rather than cause
- lack of official notification requirements (for most applicable infections or harms),
- lack of any systems for collecting local data, and
- absence of any national indicators or reporting mechanisms by which known cases could be either linked back to the applicable industry or aggregated to develop a national picture.

In cases where medical treatment is sought, the focus is necessarily on treating the illness, rather than relating that case back to the source, or developing a wider view by considering other similar cases.

Despite these limitations, there is one area where national data is collected for the proportion of adverse events that are subject to (a) a medical consultation, and (b) a claim for compensation. That area is accident compensation, which is administered by the Accident Compensation Corporation (ACC). Under governing legislation, the author understands that ACC claims can cover both customers injured by a procedure, and practitioners injured through their work.

2.2 Methodology

ACC is a government agency and as such subject to provisions of the Official Information Act (OIA) 1982. In September 2023, an OIA request was made to ACC under the asking the following questions:

1. How many claims have been lodged which relate to ‘Appearance Industry Premises’* between 1 July 2018 to 30 June 2023 (5-year period).

2. Of any claims received, can a breakdown be provided as to who the claims were from E.g. District Health Boards, Private surgical facilities, Primary health care associations etc.

3. For any claims received, can a breakdown (or estimate) of costs (compensation) be detailed per type of claim/type of appearance industry? E.g. compensation against tattooists, skin piercers, beauty therapists etc specifically.

** A definition of 'Appearance industries premises' and the types of services offered was provided*

The OIA approach was taken to ensure that the response was from ACC as an agency rather than any individual employee, the data provided would be officially cleared for release and not subject to any complications relating to privacy, and the data provided would be checked (quality assured) and signed-off before release. The response was received from ACC in a letter dated 29 September 2023.

2.3 Results and discussion

Data provided by ACC data is shown in Tables 1 to 5, with discussion following each. The following provisos and context apply to the data supplied, to assist with the interpretation.

- All data is in reference to 'accepted' claims only and excludes accredited employer claims. Therefore, the number of claim attempts, and total number of claim applications (when factoring in unsuccessful claims and claims from accredited employers) is likely much higher, though how much higher is unknown.

- Completing the accident description on any claim is not mandatory. If this field is completed, the level of detail provided (which relates to the key words to enable data searches) also varies significantly. Therefore, this data has been provided as **indicative data** only.

- Each year listed in Tables 1-5 is a financial year running from 1 July to 30 June the following year. Active claims refer to the year period when payments were made for a service, which does not necessarily mean the claim was made within the same year period.

- Where numbers in the tables below are indicated as <4, this means fewer than four instances were retrieved from the data search. Where two dots (..) is seen within the table, the data value has been withheld under section 9(2)(a) of The Privacy Act to protect the privacy of individuals, as numbers again are low for the data field in question, therefore increasing the potential for persons to be identified through other means.

For the purposes of this report the author notes that the data provided by ACC is likely to represent only a subset of cases where medical complications have arisen following an appearance industry procedure. However, it is reliable in as far as providing **low-end boundary estimates**: that national cases are 'at least this many, and likely many more.' It also provides an indicative sense of both the **relative scale** of adverse incidents (even at this low end of estimates), and their **ongoing persistence** in moving from one year to the next. Although the data is limited to a 5-year window, it can also be used for assessing existence of any obvious **trends** within that timeframe.

The number of new claims, active claims, and total costs for injuries from beauty therapy treatments within that 5-year window are shown in Table 1.

Table 1: The number of new claims, active claims, and total costs (excluding GST) for injuries from beauty therapy treatments between 01 July 2018 to 30 June 2023.

Data category	Measure	2018/19	2019/20	2020/21	2021/22	2022/23	Averages (derived)
Statistics provided by ACC	New claims lodged (and accepted)	1,008	972	1,180	1,065	1,317	**1,108**
	Active claims paid	941	951	1,061	1,030	1,257	**1,048**
	Cost of active claims[1]	$517,070	$612,358	$516,143	$606,458	$687,426	**$587,891**
Derived statistics	Cost per paid claim[1]	$549	$644	$486	$589	$547	**$563**
	Proportion of **active claims paid** to **new claims lodged** (%)	93.4	97.8	89.9	96.7	95.4	**94.7**

[1]Costs of paid claims and average cost per paid claim are as apply to that fiscal period and are not inflation - adjusted.

The above table outlines the cost of active claims only (paid for claims within the period/year in question which may or may not be the same year the claim was initially made). Many of the appearance industry businesses would have been unable to trade due to COVID-19 lockdowns (Alert Levels 4 and 3) during the year 2020/21, which likely caused a flow on effect into the year 2021-22 when lockdowns still occurred in parts of the country and trade was still somewhat restricted at times. The rising costs of living, along with inflation and the potential for changes in human behaviour (e.g. anxiety over appearance due to increased virtual communication formats such as video calling), may all need to be considered alongside these figures for greater context. Certainly, comparing the year period 2018/19 to 2022/23 shows a marked increase financially of approximately $160,000. Over the five-year period the average cost-per-paid claim ranged from $486 to $644.

Focussing on new claims lodged and accepted, the data shows a statistically significant ($R=0.798$, $p<0.05$) upward trend. This implies that there is an increase of about 70 new claims being lodged and accepted each year, from a base rate of about 1,100 (Table 1) over the period June 2018 to June 2023.

A longer record would be required to confirm that this apparent trend is genuine, but two external factors suggest that is it likely to be real. These are (a) increasing total population, and (b) likely increase in per-capita popularity of appearance procedures (as discussed in Section 1.2A and 1.2B of this report). Assuming the trend is genuine and continues at much the same rate, by 2040 (16 years from 2024) there would be ca. 2,500 new claims per year, and by 2050 there could be over 3,200 claims per year. Costs would also increase proportionally.

In relation to costs and wider impacts, three further factors are relevant:

- Costs in Table 1 apply only to those recorded by ACC in connection with paid claims and exclude other economic or health metrics that describe such things as lost work hours and productivity losses, or downstream and chronic impacts that may not be included in the ACC claim.

- The data relating to claims lodged and paid provides no indication of the proportion of adverse impacts that are acute, life-threatening, serious, or long-lasting compared with proportions of accepted claims that are significant but less serious in nature.

- It is unknown what proportion of accepted claims are from practitioners rather than their clients – but other data (Table 3) strongly suggests that most claims lodged would be from customers.

It is the author's understanding that under ACC rules, new claims are registered and lodged by a qualified medical practitioner on behalf of the applicant. Points of entry for a claim to be lodged into the system included district health boards (DHBs, now Health New Zealand – Te Whatu Ora, presumably representing hospital consultations), General Practitioners, nurses, physiotherapists, plastic & reconstructive surgeons, podiatrists, and others. Table 2 provides a breakdown of new claims by provider. Note the totals for each year sum to the total new claims lodged for that year (Table 1).

Table 2: The number of new claims for injuries from appearance industry treatments lodged between 01 July 2018 to 30 June 2023, broken down by the type of provider who registered the claim.

Registering agent	As numbers					
	2018/19	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**Average**
DHB	120	110	120	99	111	112.0
General Practitioner (GP)	756	750	909	822	1040	855.4
Nurse	36	43	50	47	63	47.8
Physiotherapist	15	12	24	17	19	17.4
Plastic & Reconstructive Surgeon	37	31	49	46	38	40.2
Podiatrist	10	8	7	7	11	8.6
Others	34	18	21	27	35	27.0
Sum	1008	972	1180	1065	1317	1108

Registering agent	As percent (%) of total for each period					
	2018/19	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**Average**
DHB	11.9	11.3	10.2	9.3	8.4	10.2
General Practitioner (GP)	75.0	77.2	77.0	77.2	79.0	77.1
Nurse	3.6	4.4	4.2	4.4	4.8	4.3
Physiotherapist	1.5	1.2	2.0	1.6	1.4	1.6
Plastic & Reconstructive Surgeon	3.7	3.2	4.2	4.3	2.9	3.6
Podiatrist	1.0	0.8	0.6	0.7	0.8	0.8
Others	3.4	1.9	1.8	2.5	2.7	2.4
Sum	100	100	100	100	100	100

Unsurprisingly, the highest source of claims comes via visit to a general practitioner (GP, averaging 77%) or *via* a DHB (now Health New Zealand – Te Whatu Ora, averaging 10.2%). Assuming that most of DHB registrations were to find general medical help (e.g. via a visit to Accident & Emergency), both of these categories would represent the patient 'seeing a doctor.' On that basis they could be combined to estimate that, on average, 87% of all referrals followed a consultation with a general medical doctor, rising to 92% if nurses are included in that tally of general medical practitioners (rather than specialists).

The remaining identified professions (plastic & reconstructive surgeons, podiatrists, physiotherapists) account for an average of 6% of registrations. Although a consultation to any of these practitioners may follow on from a primary GP or DHB referral, these statistics are probably dominated by self-referrals. This is because in the case of a GP referral registration is most likely to happen at that initial level.[37] With respect to the identified *specialists*, the values shown are therefore unlikely to reflect the true number of specialist consultations or treatments (e.g. reconstructive surgeries), but could reflect a self-referral minimum.

Though it is not known what proportion of these claims came about after treatments from registered versus unregistered businesses, or whether or not those businesses were operating under a bylaw, the general health advice for any type of procedure or treatment offered (even outside of the appearance industries) is to consult with a GP should any adverse health effects occur.

New claims for each period classified by treatment are shown in Table 3, and those for active claims are shown in Table 4.

Table 3: The number of new claims for injuries from beauty therapy treatments broken down by individual treatment/procedure between 01 July 2018 to 30 June 2023.

Treatment type	As numbers					
	2018/19	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**Average**
Acupuncture	59	41	66	47	57	54.0
Body Piercing	290	277	375	411	435	358
Exfoliation	35	57	56	56	78	56
Laser Hair Removal	19	15	21	20	15	18
Manipedi/Pedicure	123	98	121	120	155	123
Sunbed	-	<4	<4	-	<4	<4
Tattoo	473	479	533	404	570	491.8
Tattoo Removal	<4	<4	-	<4	-	
Sum	999	967	1172	1058	1310	1101

Treatment type	As percent (%) of total accounted for in for each period					
	2018/19	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**Average**
Acupuncture	6	4	6	4	4	5
Body Piercing	29	29	32	39	33	32
Exfoliation	4	6	5	5	6	5
Laser Hair Removal	2	2	2	2	1	2
Manipedi/Pedicure	12	10	10	11	12	11
Sunbed	-	-	-	-	-	-
Tattoo	47	50	45	38	44	45
Tattoo Removal	-	-	-	-	-	-
Sum	100	100	100	100	100	100

When considering the risk and invasiveness of the above-mentioned procedures, tattooing is the number one treatment type in terms of claims made via ACC, accounting for an average of 45% and

[37] The raw data (which sums to total cases lodged for each year) reflects first point that a case was registered, not all points in the treatment chain.

up to half, of all claims (Table 3). Second (averaging 32% all claims), is body piercing, which like tattooing pierces the skin and increases the risk of blood-borne and other infections occurring. Third (averaging 11%) is Manpedi/Pedicures (manicure and pedicure procedures). These treatments can be invasive (with the skin barrier being breached), but likely this treatment type features third highest due to the prevalence and popularity of these services, most of which are walk-in, high customer turnover establishments. Even if cases of bleeding were uncommon, the high client numbers would translate to a larger number of subsequent infections. Acupuncture (at 5% on average) also involves breaching the skin barrier.

Together, tattooing, body piercing, and manicure and pedicure procedures, and acupuncture account for 93% of all cases, suggesting that almost all adverse health events are likely to be caused by microbial infections (linked to poor hygiene control) rather than chemical or physical causes. The other two areas – exfoliation (5% of cases) and laser hair removal (2%) – suggest a possible role of chemical and physical factors in a proportion of the cases. For example, both could result in direct damage to the skin including burns.

Table 4: The number of active claims for injuries from beauty therapy treatments broken down by individual treatment/procedure between 01 July 2018 to 30 June 2023.

Treatment type	As numbers					
	2018/19	2019/20	2020/21	2021/22	2022/23	Average
Acupuncture	72	63	82	64	67	70
Body Piercing	266	269	312	378	422	329
Exfoliation	39	49	56	51	69	53
Laser Hair Removal	20	17	21	22	12	17
Manipedi/Pedicure	118	111	118	130	163	128
Sunbed	..	<4	5	..	5	3
Tattoo	413	438	461	377	512	434
Tattoo Removal	<4	<4	6	<4	7	5

Active claims refers to the year when payment was made for services towards treatment, not necessarily the year the actual claim was made. The data in Tables 3 and 4 cannot be added to derive a total sum, because there are an unknown number of duplicates: in a proportion of cases the new claim (Table 3) and active claim (Table 4) are in the same period, and in other cases the new claim is in a period before the active claim. However, when comparing the above figures to those in Table 3, the numbers are not too dissimilar and still show that tattooing, followed by skin piercing and manipedi/pedicure treatments are the top three treatments causing claims to be made.

Costs of active claims categorised by procedure are shown in Table 5.

Table 5: The cost (excluding GST) of active claims for injuries from beauty therapy treatments broken down by individual treatment/procedure between 01 July 2018 to 30 June 2023.

Treatment type		2018/19	2019/20	2020/21	2021/22	2022/23
Acupuncture		$64,915	$82,380	$50,479	$32,996	$64,950
Body Piercing		$102,226	$97,041	$126,240	$150,880	$237,704
Exfoliation		$32,813	$25,342	$36,128	$28,152	$48,738
Laser Hair Removal		$2,002	$7,220	$5,931	$4,458	$2,490
Manipedi/Pedicure		$116,497	$89,348	$28,568	$84,301	$46,456
Sunbed		$2,189	$468	$685	$6,738	$2,622
Tattoo		$196,136	$307,889	$265,881	$296,617	$281,453
Tattoo Removal		$292	$2,671	$2,231	$2,316	$3,013
	Sum	$517,070	$612,358	$516,143	$606,458	$687,426

Table 5 expands on the information from Table 1, which provided the overall cost of active claims. The total values have been repeated in this table, but upon breaking down the claim by treatment type, the same top three of tattooing, skin piercing and manipedi/pedicure treatments feature.

Worth noting though is the continued year on year increase in costs for body piercing claims, even with some services likely being restricted (in terms of trade) through 2020/21 and 2021/22 years due to COVID-19 restrictions. What may also need to be considered, but is unable to be quantified, is how many injuries may have occurred from individuals trying such services at home during extended lockdowns.

Also of interesting note is the cost of tattoo removal, which is arguably becoming more and more common these days as the rise in popularity of tattoos also increases (meaning tattoo regret also may increase). This data only covers tattoo removals subject to an ACC claim, so cases where something went wrong. Within the total costs for all ACC claims the tattoo removal costs are very low, however when considering the COVID-19 effect for the 2020/21 and 2021/22 years, it is a reasonable assumption that these costs may continue to slowly rise in years to come.

2.4 Summary of ACC data

The information provided by the OIR to ACC highlights the main treatment types where claims arise from are tattooing, skin piercing and manipedi/pedicure (manicure and pedicure) treatments. Specific data however, is hard to obtain and it is likely that many infections or adverse effects following a service provided by an appearance industry provider (whether registered or not or operating under a bylaw or not) goes largely unreported. What this data also does not provide is context for how the injury or adverse reaction occurred, nor exactly where.

It is impossible to know whether claims to ACC have come about from registered operators under a current bylaw, or unregistered persons not operating under a bylaw. However, the information does indicate there are adverse costs to our healthcare systems that can be linked to these industries in some way. Claim numbers are not likely to be a reliable indicator of the extent of health risks and adverse effects experienced arising from appearance industries practices.

Some trends however, can be identified from the ACC data provided. An obvious trend is the rising cost of claims from body piercing treatments year on year for the last 5 years (Table 5), even with COVID-19 restrictions occurring and likely affecting these industries and their ability to trade normally. More widely for the appearance industries, the ACC data shows a statistically significant ($p<0.05$) increase in new claims lodged over the same 5-year period, with an average increase of about 70 new claims per year, on a base-rate of about 1,100 (Table 1). Assuming the trend is genuine and continued at much the same rate, by 2040 (16 years from 2024) there may be about 2,500 new claims per year. Combined with New Zealand's increasing population, the rise in popularity in many, if not all services provided by the appearance industries within New Zealand and the lack of national legislation for these industries, means that costs to our healthcare system (via ACC claims, loss of working hours etc) will potentially continue to rise.

The costs are not merely financial, as some injuries, infections, reactions, or communicable diseases acquired through one of these services can have long-lasting, if not lifelong effects on the physical and mental health of people. With these industries covering 'appearance services', there is a high likelihood of adverse effects being visually adverse and potentially noticeable to others, which effects a persons' mental health, confidence, possibly relationships, productivity and the like in ways data can never hope to fully capture.

The true cost the author suggests is significantly higher than any data set can hope to estimate and needs to be considered when decision makers write, update, and consider implementing a bylaw.

3.0 What Legislation and National Guidance currently exists?

3.1A Primary Legislation

3.1A.1 The Health Practitioners Competence Assurance Act 2003

The Health Practitioners Competence Assurance Act 2003 has been mentioned throughout this report, however in general does not apply to the appearance industries. It is the author's understanding that this Act covers the medical profession including Pharmacies who pierce ears, trained medical staff (such as nurses) who administer Botox treatments and the like. This Act therefore, will not be explored further as it is outside the scope of this report, which is focusing on services falling under the appearance industries definition.

3.1A.2 The Health Act 1956

The Health Act 1956 is the primary piece of legislation relating to public health within New Zealand currently. Of relevance to the appearance industries, there are no requirements directly under the Health Act for these premises to hold a certificate of registration, nor be regularly inspected by any person. The section of greatest relevance to these industries is section 29 which covers Health Act nuisances.

In the event of a complaint being received (most likely made direct to a council), about a possible problem, adverse (health) effect or likely infection resulting from an appearance industry business, these complaints would most likely be handled by Environmental Health Officers (EHOs) within council using the Health Act. Alternatively, complaints could be received by private industry groups such as the New Zealand Association of Registered Beauty Therapists (NZARBT) or via Health New Zealand - Te Whatu Ora (Public Health) staff who are likely Health Protection Officers (HPOs) or the Medical Officer of Health (including delegated Medical Officers of Health). A Medical Officer of Health (MOoH), Health Protection Officer or Environmental Health Officer can be warranted under certain sections of the Health Act.

3.1A.2A Application of The Health Act in practice: Section 29: Health Nuisances

Section 128 of The Health Act 1956 allows any MOoH, HPO or other person authorised by a local authority (namely an Environmental Health Officer) power of entry and inspection to any dwellinghouse, building, land, ship, or other premises. The reason for entry would be to ascertain if any provision of the Health Act was being breached, such as a health nuisance being present.

Section 29 of the Health Act outlines various scenarios where a nuisance may occur. Likely of most relevance to a complaint being received about an appearance industry are sub sections:

29 (d) “Where any premises are so situated, or are in such a state, as to be offensive or likely to be injurious to health”

29 (g) “Where any factory, workroom, shop, office, warehouse, or other place of trade or business is not kept in a clean state, and free from any smell or leakage from any drain or sanitary convenience”

29 (h) “Where any factory, workroom, shop, office, warehouse, or other place of trade or business is not provided with appliances so as to carry off in a harmless and inoffensive manner any fumes, gases, vapours, dust, or impurities generated therein”

29 (l) “Where any trade, business, manufacture, or other undertaking is so carried on as to be unnecessarily offensive or likely to be injurious to health”

The main limitation with the Health Act 1956 is the age of this legislation and therefore the inadequacy of the relative penalties available. For a breach of section 29 (nuisances), this falls under section 136 of The Act (General penalty for offences) which upon conviction at a District Court, the penalty would be a fine up to $500 plus $50 per day for each day the offence continues. Quite simply, given the man-hours put into preparing a case for possible conviction, let alone additional costs to potentially liaise with lawyers, the outcome is not worth the effort purely from a cost perspective.

Therefore, generally officers follow the VADE model (seeking Voluntary, Assisted, Directed, then Enforced compliance) in terms of their approach, with the aim of achieving voluntary compliance as much as possible. This is typically achieved through inspection letters (where bylaws apply), or written letters requesting an operator to undertake certain actions to reduce a potential nuisance and improve their practices. Where individual bylaws exist, the regular inspections of appearance industry operators plus the provisions of that bylaw generally give officers more tools to work with to be specific in their directions and try achieving compliance when incidents/complaints occur.

If the Health Act 1956 was however the only tool available (in the event of a bylaw not existing), then further discussion and the following authors opinion is offered.

Section 29 (D) may apply for example in relation to the general cleanliness (or lack of) for an appearance industry premises or a pest infestation. The level of cleaning or general state of the premises would have to be extreme to be causing an imminent risk to public health. This provision is in essence too broad in its wording to be of much assistance.

Section 29 (G) relates more specifically to the level of cleaning within a premises, therefore in relation to cleaning concerns would be a stronger and better option to pursue than Section 29 (D). Furthermore, this provision relates to a place of trade and encompasses smell, leakage from drains or any other sanitary inconvenience which is arguably open to interpretation. A sanitary inconvenience could be argued if a lack of disinfecting and/or sterilisation practices were found, however in this instance an educative approach to correct the issue would be more likely than using this provision of the legislation in an enforcement way.

Section 29 (H) would most likely be used for fumes and/or vapours. Where this may be applicable would be nail salons or premises that use reasonable amounts of alcohol and/or acetone (nail polish remover). Again, an educative approach is more likely to be taken on receipt of such a complaint and

a potential cross over to a HSNO Officer (warranted under the Hazardous Substances New Organisms Act 1996) may need to be consulted to check how chemicals are stored, allowable volumes on site etc.

It is worth considering the acute versus chronic nature of any potential fumes or smells and the possible health effects these could cause on others. In the author's experience as an Environmental Health Officer, a best practicable option (BPO) approach would be taken to try mitigating any such concern, which would include considering chemical storage, volumes, general use/application and of course sources of ventilation within the premises to minimise any possible health risks to other persons or the public.

Section 29 (L) is another general clause, which really would apply to how a business operates overall. The words 'unnecessarily offensive or likely to be injurious to health' suggest a business would be trading quite negligently and obliviously, therefore causing possible health effects. Unless an operator was intentionally trying to be offensive or cause possible health effects, generally an educative approach to try to improve operator practices would go a long way towards reducing any possible health risk in most cases.

Should any provision of the Health Act be used for enforcement, an application to the District Court would be required (charges laid) to begin court proceedings against the alleged offender.

3.1A.2B Application of The Health Act in practice: Part 5: Artificial UV Tanning (sunbeds)

Interestingly, the Health Act under Part 5 of the Act (sections 113 and 114) bans artificial UV tanning services (commonly known as sunbeds) to any person under the age of 18. To prove age, the forms of Identification from the Sale and Supply of Alcohol Act 2012 are the only acceptable forms of ID able to be accepted (these are: any current passport, a current New Zealand Drivers licence, a current HANZ 18+ card, or current Kiwi Access card). Though perhaps less seen present day, sunbeds have been associated with beauty therapy premises and practices historically and some still exist within the wider industry today.

3.1A.2C Application of The Health Act in practice: Powers of Environmental Health Officers

EHOs have abilities under The Health Act possibly less known to them regarding the ability to disinfect a premises. Section 81 of the Health Act allows a local authority to authorise an EHO to cleanse or disinfect any premises or article to prevent the spread or limit or eradicate the infection of any infectious disease. Section 82 furthermore allows any Medical Officer of Health to require an EHO to undertake the same cleansing or disinfecting activities as outlined above, with the cost of such disinfection or cleansing able to be recovered by the local authority as a debt due to the Crown. Section 83 states that any infected articles (identified from the actions of an EHO under section 81 or 82) are able to be destroyed if the article is of such as nature that it cannot be cleansed or disinfected.

Other options available include the possible issuing of a **cleansing order** or **closing order** under The Act. A cleansing order may be issued under section 41 of the Act to prevent danger to health, by

requiring the owner or occupier of the premises to cleanse the premises. Non-compliance with such an order means the local authority could cleanse the premises on the owner or occupier's behalf at the owner/occupier's expense along with failing to comply with such an order being an offence under the Act itself. Section 42 of the Act also allows a repair or closing order to be issued, however such orders can only be issued in relation to a dwellinghouse, which would not apply to the appearance industries of relevance to this report, unless a home-occupation business was in operation.

Compared to a cleansing order, the other option available to EHOs is the power to abate a nuisance without notice under section 34 of the Act. A nuisance for the relevance of this section, would relate to those outlined previously under section 29 of the Act and would need to be present in an obvious if not extreme way for an EHO to take the step of abating a nuisance without notice. Whilst an option, it is more likely that an educative approach seeking voluntary compliance is sought, with the provisions under this Act more likely to be a last resort option. An educative approach is still potentially more viable than taking someone to court.

Overall, the Health Act 1956 contains provisions which could be called upon to address specific serious health concerns where they already exist. However, this piecemeal approach of relying on selected sections of the primary legislation is less than ideal.

3.1B Secondary Legislation

3.1B.1 Tattoo and Permanent Makeup Group Standard 2020

The Environmental Protection Agency of New Zealand (EPA) in 2020 produced the Tattoo and Permanent Makeup Group Standard. The standard sets out the rules and conditions to manage the chemical risks associated with tattoo and permanent makeup substances.[38] The standard requires tattooists within New Zealand to only buy tattoo ink that fits the standard, which includes requesting chemical safety data sheets and ensuring all inks are labelled correctly. This standard also applies to inks used in traditional and customary tattooing.[39] The author believes there is possibly an over-reliance on this standard that only covers chemical substances, when arguably the most serious risks from tattoo inks are microbiological. Minor amendments were made to this standard in August 2022, taking effect on 24 November 2022.

[38] Environmental Protection Authority New Zealand website: Tattoo and permanent makeup substances guidance for business. Available from: https://www.epa.govt.nz/industry-areas/hazardous-substances/guidance-for-importers-and-manufacturers/tattoo-and-permanent-makeup-substances/ Accessed 03/09/23.

[39] Environmental Protection Authority New Zealand website: Tattoo and permanent makeup substances guidance for business. Available from: https://www.epa.govt.nz/industry-areas/hazardous-substances/guidance-for-importers-and-manufacturers/tattoo-and-permanent-makeup-substances/ Accessed 03/09/23.

3.1C Health sector reporting or guidance

3.1C.1 The Ministry of Health's Guidelines for the Safe Piercing of Skin 1998

These guidelines were released by the Ministry of Health in 1998 and have not since been re-released nor updated. It is acknowledged within these guidelines that "body piercing and tattooing are activities that can affect public health when operators use unsafe techniques. There are significant hazards posed by contact with blood and body fluid, such as (the risk of) transmitting blood-borne viral diseases."[40]

The expectation of these guidelines was that they would be used by industry territorial authorities, educators and those interested in health and safety in the workplace to provide a framework of minimum standards with respect to infection control within the industry.[41]

These guidelines can also be used by acupuncturists, beauty therapists, hairdressers, pharmacists, jewellers, or other operators performing skin piercing procedures.[42] These guidelines have been mentioned and/or referenced in several of the current bylaws in existence, and though now 26 years old, remain a commonly referred to and generally accepted minimum standard guideline today.

Introducing these guidelines had several aims[43], to:

- Minimise the risk of transmitting infection (via piercing of the skin);
- Reduce cross contamination through providing guidance on cleaning, disinfection and sterilisation of equipment processes;
- Promote sterile piercing techniques through proper skin preparation, single use, sterile materials and the management of sharps;
- Consider operator health and hygiene e.g. personal protective equipment, vaccinations;
- Manage injuries from sharps, and bleeding incidents;
- Dispose of biological waste correctly;
- Ensure clients undertake informed consent procedures and receive appropriate aftercare advice;
- Promote good record-keeping practices.

3.1C.2 Ministry of Health Customary Tattooing Guidelines for Operators 2010

These guidelines were developed by The Ministry of Health, specifically targeted at customary tattooing/tatau practices within Samoan culture. The purpose of these guidelines is to protect people from injury or illness due to infection or contamination. Tatau is a process that has been

[40] Ministry of Health Guidelines for the safe piercing of skin 1998, Foreword page iii.
[41] Ministry of Health Guidelines for the safe piercing of skin 1998, Foreword page iii.
[42] Ministry of Health Guidelines for the safe piercing of skin 1998, 'Who are the guidelines for', page 6.
[43] Ministry of Health presentation. July 2015: New Zealand Regulatory Approach to tattooing, Available from: http://mobil.bfr.bund.de/cm/343/new-zealand-regulatory-approaches-to-tattooing.pdf Accessed 03/09/23.

around for over 2000 years and is applied by hand.[44] A Samoan tatau artist is called a Tufuga. The skill is passed from father to son, with each tatau artist learning as an apprentice over many years.

Tatau is applied using a comb or au, which is made from sharpened boars' teeth fastened together, with a portion of turtle shell, to a wooden handle. The tufuga uses a mallet to tap the teeth of the ink-laden comb into the skin to create the tatau pattern.[45] This process (like modern, conventional tattooing applications) creates health risks to be considered. These guidelines aim to provide minimum standards to ensure the process of customary tattooing/tatau is conducted safely.

The guidelines were introduced following four cases of necrotising fasciitis (NF) resulting after traditional Samoan tattoos were received, of which one case led to septic shock and organ failure with a person ultimately dying. The hope was that the guidelines would assist in lowering the risk associated with customary tattooing, knowing that such procedures will never be risk free.[46]

Another published example of adverse health effects being experienced after receiving tatau, was from the New Zealand Medical Journal in December 2020. This article outlined two brothers who both received tatau and both experienced unwanted health effects afterwards, resulting in hospitalisation for both brothers. Within the discussion of this article, it is noted that *'A previous public health investigation found that tufuga had poor infection control knowledge and inadequate procedures for sterilisation of equipment'*.[47] This further illustrates the need to regulate all skin penetrating activities, traditional or otherwise to minimise the risk of adverse health effects such as unwanted infections occurring. The guidelines introduced by The Ministry of Health however are just that – guidelines – and therefore are not legislation nor enforceable but strongly encouraged and more so used to provide education and guidance.

3.1C.3 Traditional Tattooing pamphlet, Auckland Regional Public Health Service 2009

In 2009, the Auckland Regional Public Health Service produced a brochure called 'Traditional Tattooing' outlining the risks associated with customary and traditional tattoos. This brochure outlines briefly what clients can expect during a traditional tattoo, what the risks are, a description of the process itself generally along with aftercare advice.[48]

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44 Ministry of Health Customary Tattooing Guidelines for Operators, 2010, Page 1

45 Ministry of Health Customary Tattooing Guidelines for Operators, 2010, Appendix 1, Page 10

46 Ministry of Health presentation. July 2015: New Zealand Regulatory Approach to tattooing, Available from: http://mobil.bfr.bund.de/cm/343/new-zealand-regulatory-approaches-to-tattooing.pdf Accessed 03/09/23.

47 Lakshman, Prashant; Zhang, Christine; Balm, Michelle; Morice, Yesim; and Towns, Cindy. 04/12/20. New Zealand Medical Association Journal Vol 133 No 1526. Available from: blood-brothers-tattoo-sepsis-in-two-samoan-men.pdf (nzmj.org.nz) Accessed 03/09/23.

48 National Public Health Service – Northern Region. 12/01/09. Available from: https://www.arphs.health.nz/our-resources/traditional-tattooing-english/ Accessed 03/09/23.

3.1C.4 Ministry of Health Consultation Document 2018

In 2018, The Ministry of Health (MoH) released a consultation document entitled 'Managing Health Risks in the Personal Appearance Industry". Whilst not approved for publication, this document outlines draft proposals suggesting nationally consistent regulations be made under The Health Act 1956 to better manage health risks in the personal appearance industry.

Such national regulations would replace local bylaws and enable registration by all those undertaking personal appearance procedures, whilst enabling greater monitoring compliance and enforcement responsibilities.

In May 2018, The Ministry developed and sent a one-page questionnaire to Public Health units and the New Zealand Institute of Environmental Health for distribution to survey tattooists, cosmetic tattooists, body piercers and those undertaking body modification services. The intent of this survey was to find out from industry itself, to help them consider ways the Ministry could better prevent public health risks from unhygienic practice, equipment, and premises. This survey was to form part of the consultation document prepared for government, which unfortunately was never approved for publication.

It is the author's understanding that due to staff changes and project priorities within the Ministry, along with a change in priorities of the government, this project has not progressed further and shows no sign of being resumed anytime soon. It is hoped that this report will provide impetus for the resumption of the important policy work in this area.

3.1C.5 Regional Public Health's Survey of Knowledge and Infection Control Practices in Salons offering Nail services 2018

Regional Public Health (Wellington area) in 2018 released a report outlining the results of a survey conducted amongst 57 nail and beauty salons in the Wellington region between January and July 2017. The purpose of this survey was to assess the knowledge and infection prevention and control procedures within the nail industry specifically.[49]

Some key findings of the report included:

- A lack of recognised formal qualifications;
- Trained staff were twice as likely to ask clients about pre-existing health conditions;
- Limited understanding of blood borne viruses and how other infections are spread or controlled was observed;
- A lack of understanding about cleaning, disinfecting, sterilising and hygienically storing instruments was found;
- Most salons did not have written infection control protocols for staff to follow or cleaning schedules;

[49] Regional Public Health. 2018. Survey of Knowledge and Infection Control Practices in Salons Offering Nail Services. Wellington. Regional Public Health. Available from: https://www.rph.org.nz/resources/publications/survey-of-knowledge-and-infection-control-practices-in-salons-offering-nail-services.pdf Accessed 04/09/23.

- Nail and Beauty Salons visited in the Wellington region were overwhelmingly supportive of some form of regulation to improve standards within the industry; and
- There is both a need and interest within the industry, for education and resources to be provided regarding infection control practices in nail and beauty salons that provide nail treatments[50]

Since its publication, this report has been referred to in other media, for example within a Radio New Zealand article from 2019 which quoted elements of the report to highlight the lack of national regulation and mentioning two Councils (Nelson and Marlborough) who allegedly were not considering local bylaws themselves, claiming a lack of local evidence of unhygienic practices or associated health problems.[51]

This also applies to Councils within the Wellington area, who were referred to within the report as "Indicating that they would be supportive of a bylaw to reduce risk to the public health but that there would need to be evidence of the risk in order to provide Councillors with justification to enact a new bylaw".[52] Since the date of this report, Hutt City Council and Upper Hutt City Council have both introduced bylaws, however Wellington City Council, Porirua City Council and Kapiti Coast District Council have not.

3.1D Industry best-practice documents

3.1D.1 New Zealand Association of Registered Beauty Therapists (NZARBT) Health, Hygiene and Safety Standards

The New Zealand Association of Registered Beauty Therapists (NZARBT) was formed in 1968 and became an incorporated society in 1970. NZARBT has approximately 680 registered members.[53] Their priorities are to encourage a highly qualified, safe, and supportive industry with membership options available for those within the trade to connect, learn and support each other. The Association boasts an informative website and produces a magazine (Beauty NZ) a couple of times a

[50] Regional Public Health. 2018. Survey of Knowledge and Infection Control Practices in Salons Offering Nail Services. Wellington. Regional Public Health. Executive summary. Available from: https://www.rph.org.nz/resources/publications/survey-of-knowledge-and-infection-control-practices-in-salons-offering-nail-services.pdfhttps://www.rph.org.nz/resources/publications/survey-of-knowledge-and-infection-control-practices-in-salons-offering-nail-services.pdf Accessed 04/09/23.

[51] Radio New Zealand article. 28/03/19. Available from: https://www.rnz.co.nz/news/national/385799/wellington-nail-salons-lack-of-hygiene-highlighted-in-report Accessed 03/09/23.

[52] Regional Public Health. 2018. Survey of Knowledge and Infection Control Practices in Salons Offering Nail Services. Wellington. Regional Public Health. Introduction, Page 6. Available from: https://www.rph.org.nz/resources/publications/survey-of-knowledge-and-infection-control-practices-in-salons-offering-nail-services.pdf Accessed 04/09/23.

[53] Wintec.ac.an website: Beauty Therapist Job profile. Available from: https://www.wintec.ac.nz/future-you/explore/jobs/hair-and-beauty/beauty-therapist#:~:text=The%20New%20Zealand%20Association%20of,in%20New%20Zealand%20in%202018. Accessed 17/04/24.

year. Within their website, the association lists industry training providers, of which there are 16 listed (across 20 campuses) nationwide.

In 1990 the Association first produced a Code of Practice which underwent several revisions over the years, up until its last revision in March 2014. From July 2016, the Code of Practice was re-released and renamed the 'Health, Hygiene and Safety Standards' with the latest version (version 4) being released September 2022. Alongside the Health, Hygiene and Safety Standards, a Code of Ethics (May 2022) is also available for all members to adhere to.[54]

The Health, Hygiene and Safety Standards pulls together international accepted best practice including from medical fields to ensure members stay at the forefront and encourage higher standards of safe, hygienic practices.[55]

Within the standard multiple topics are covered including (but not limited to) qualifications, premises requirements (structure, maintenance, cleaning, laundry facilities etc), cleaning, disinfection and sterilisation procedures, hand, and personal hygiene requirements as well as requirements for high-risk treatments (such as skin piercing, electrolysis, hair removal, manicures and pedicures, exfoliation, cosmetic tattooing, dermaplaning, laser, IPL, and LED treatments etc).

The document provides minimum expected standards especially in relation to hygienic practices and to minimise health risks, however, also offer commentary and other background guidance – some of which is not always directly applicable to maintaining hygiene standards. An example would be the commentary offered around the use of ultrasonic cleaners with a cautionary note about "not submerging any part of the operator's body into the water tank while the machine is in use as this is thought to cause long-term arthritic conditions."[56]

Whilst this is potentially a consideration from the health and safety of the operator's perspective, arguably this wording within the document is not in keeping with the overall intention which is to promote hygienic practices and minimise health risks associated with the services offered (including how said equipment is cleaned, disinfected, or sterilised to minimise the risk of infection etc). Furthermore, there is frequent use of the term 'Hospital grade disinfectant' throughout the document. To the best of the author's knowledge there is no definition for what sort of product this is or what it means to be 'hospital grade', which could be misleading. The standard does however include excellent visuals, for example in relation to hand hygiene and disposable glove use, which are in the author's opinion great additions to reinforce key hygiene messages to operators.

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[54] The New Zealand Association of Registered Beauty Professionals website: Available from: https://www.beautynz.org.nz/ Accessed 03/09/23.

[55] The New Zealand Association of Registered Beauty Professionals Health, Hygiene and Safety Standards for Registered Beauty Professionals. September 2022 Edition, V4. Available from: https://www.beautynz.org.nz/files/3116/7772/4442/Health_Hygiene_and_Safety_Standards_for_Registered_Beauty_Prodessionals_November_2022.pdf Accessed 04/09/23.

[56] The New Zealand Association of Registered Beauty Professionals Health, Hygiene and Safety Standards for Registered Beauty Professionals. September 2022 Edition, V4. Ultrasonic cleaners. Available from: https://www.beautynz.org.nz/files/3116/7772/4442/Health_Hygiene_and_Safety_Standards_for_Registered_Beauty_Prodessionals_November_2022.pdf Page 12, Accessed 04/09/23.

3.1D.2 NZ Laser Pamphlet and Training Code of Practice

NZ Laser, an independent training institute in 2021 produced a 6-page brochure/pamphlet entitled 'Get Compliant to Auckland Council's Health & Hygiene Bylaw for IPL & Laser'. This pamphlet outlines NZ Laser's code of conduct and offers training for operators to upskill themselves and gain qualifications to ensure compliance with Auckland Council's Bylaw (and Code of Practice). Within the pamphlet, key questions are answered to help 'break down' the requirements expected of operators, but also provide background for example of what industry expects operators will have experience and qualification wise before undertaking laser and IPL treatments.[57] The institute is also accredited to deliver NZQA recognised qualifications to upskill industry workers in relation to laser and intense light source therapies.[58]

The institute has also produced (in 2019) a Training Code of Practice, the purpose of which is to "to provide a structured hygiene policy that is easy to follow and to provide a more in-depth reference for those seeking to follow industry best practice".[59]

An article published in March 2024, highlighted the concerns of the New Zealand Board of Professional Skin Therapies and The New Zealand Laser Training Institute about the lack of regulation within New Zealand, when a Wellington mother of three received first and second degree burns to her chest during an intense pulsed light (IPL) treatment received.[60]

3.1D.3 The New Zealand Board of Professional Skin Therapies Health, Hygiene and Safety Standards for the NZ Aesthetic Industry

The New Zealand Board of Professional Skin Therapies is an independent professional organisation that has been formed to educate and instil best practice to represent, support and advocate on behalf of skin therapists and other sectors of beauty industry within New Zealand. Industries the board represents includes skin therapists, nail technicians, permanent make-up artists (including tattooists), laser therapists and body therapists (e.g. massage).[61]

The Board's founder, Julie Martin, has compiled and authored the Health, Hygiene and Safety Standards for the NZ Aesthetic Industry 2022. The purpose of this document is to provide guidelines to the "unregulated skin therapy industry where there is no consistent government ruling on

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[57] New Zealand Laser Training Institute: Get Compliant to Auckland Council's Health & Hygiene bylaw for IPL & Laser brochure. 2021. Available from: https://drive.google.com/file/d/13i4cFRUpSD9ZrHEd2WUFSYqG8asT29ie/view Accessed 04/09/23.

[58] New Zealand Laser Training Institute website: Available from: https://www.nzlasertraining.co.nz/our-consistent-contribution-to-the-industry Accessed 04/09/23.

[59] Nicholson, Ruth. Director, New Zealand Laser Training Institute. NZ Laser Training Code of Practice V0818. https://www.nzbpst.org/_files/ugd/6e52cc_512c01034b1a4d0696dfdc55087fb1a9.pdf Accessed 04/09/23.

[60] Client, Danielle., Radio New Zealand. Beauty industry experts pushing for more regulation amid rise in serious injuries. Available from: Beauty industry experts pushing for more regulation amid rise in serious injuries | RNZ News Accessed 17/04/24.

[61] The New Zealand Board of Professional Skin Therapies website. Available from: https://www.nzbpst.org/about-us Accessed 04/09/23.

permissible treatments, equipment, and scope of practice requirements".[62] Much like the New Zealand Association of Registered Beauty Therapists, this document is a comprehensive guideline (also referred to as a standard and Code of Practice).

3.1D.4 Other Australian/New Zealand standards

Other Australian/New Zealand standards exist for specific procedures and treatment types such as the use of Lasers and Intense Pulsed Light (IPL) sources, testing beauty therapy equipment (including servicing and safety inspection of equipment), and the handling of sharps and other forms of waste. As these standards are more targeted at specific processes for specified treatments or areas within general trading of certain operators, they have not been considered further for the purposes of this report which is focusing more on the broader (higher level) regulatory framework that exists currently within New Zealand.

[62] Martin, Julie. Chairperson, The New Zealand Board of Professional Skin Therapies. The Health, Hygiene and safety standards for the NZ Aesthetic industry, 2022. Available from: https://www.nzbpst.org/_files/ugd/d39579_a4a0271a796c4480a84e18d53b303b80.pdf Accessed 04/09/23.

3.2 Provisions to make Bylaws

3.2A The Local Government Act 2022

Part 8 of The Local Government Act 2022 (LGA) provides powers for local authorities for the making of bylaws. Within this part of the LGA, there are a few sections and provisions which are noteworthy to briefly discuss.

Section 145 outlines the bylaw making provisions for territorial authorities, noting bylaws can be made for one of three reasons:

A) To protect the public from nuisance;
B) Protecting, promoting, and maintaining public health and safety;
C) Minimising the potential for offensive behaviour in public places.

Points A and particularly B above are the most relevant when considering the appearance industries. Section 155 of the LGA discusses whether a bylaw is the most appropriate way of addressing the perceived problem. Bylaws being 'local laws' are essentially ways of solving 'local problems' either in the absence of national legislation or to strengthen national legislation in a more specific (local) way. In the case of the appearance industries, the complete lack of national legislation regulating these industries makes the threshold for introducing a new bylaw of this kind somewhat more straightforward, given the health risks from penetrating skin are generally known and accepted. Therefore, the level of public health risk, the potential for infection and spread of communicable and bloodborne diseases is already known, despite reliable data not always being available regarding the incidence rates of these risks.

Introducing and reviewing bylaws are a public process, where consultation is required (as per section 156 of the Act). Once introduced, as per section 158 of the Act, bylaws must be reviewed no later than 5 years after the date on which the bylaw was made. A bylaw if still in existence, must then be further reviewed no later than every 10 years after it was last reviewed as per section 159 of the Act.

3.2B The Health Act 1956

Section 64 of The Health Act 1956 also provides powers for local authorities to make bylaws for the following relevant matters:

A) Section 64 (1) (a): Improving, promoting, or protecting public health, and preventing or abating nuisances; and

B) Section 64 (1) (t): Prescribing the sanitary precautions to be adopted in respect of any business or trade.

Sixteen territorial authorities out of 67 in New Zealand have a bylaw that covers some or all the industries this report refers to as the appearance industries. The authorities who currently have a bylaw are (in alphabetical order):

- Auckland Council
- Dunedin City Council
- Invercargill City Council
- Lower Hutt City Council
- Napier City Council
- New Plymouth District Council
- Ruapehu District Council
- Stratford District Council
- Taranaki District Council
- Timaru District Council
- Upper Hutt City Council
- Waimate District Council
- Waitomo District Council
- Wairarapa Consolidated Bylaw
  (Covering Carterton, Masterton, and South Wairarapa Districts)

Interestingly, though only 16 out of 67 territorial authorities have a bylaw in place for the appearance industries, the population represented by these bylaws is approximately 46% of New Zealanders, as seen in Table 6 below. This means almost every second New Zealander, by the numbers lives in a location where some framework exists in terms of registration of these premises and/or minimum expected standards from a public health perspective. In considering the percentage of persons covered by a bylaw, Auckland's contribution to the numbers must be considered given it is our highest populated city and therefore territorial authority population base at approximately 1.7 million people. The next highest territorial authority by population where a bylaw applies is Dunedin at approximately 130,000 people.

From a health risk perspective, the risk is the same no matter where people choose to live within New Zealand, therefore though there are only 14 bylaws (representing 16 out of 67 territorial authorities) currently in place, the fact that almost every second New Zealander is affected by a bylaw of some sorts is encouraging. More than half of the population however, wherever based, unfortunately are not covered by any sort of bylaw. Therefore, over 50 percent of New Zealanders who seek treatments are arguably at a higher risk of adverse effects occurring from these industries as there is no set framework in place to regulate the industries in these locations beyond self-regulation or industry involvement.

Table 6: Territorial Authority Population per Appearance Industry Bylaw currently in place.
(Population figures as of June 2022)

BYLAW	POPULATION
Auckland Council	1,695,200
Dunedin City Council	130,400
Invercargill City Council	56,800
Lower Hutt City Council	112,500
Napier City Council	66,800
New Plymouth District Council	87,700
Ruapehu District Council	13,000
Stratford District Council	10,150
South Taranaki District Council	29,600
Timaru District Council	48,500
Upper Hutt City Council	47,700
Waimate District Council	8,320
Waitomo District Council	9,720
Wairarapa Consolidated Bylaw: Carterton	10,250
Wairarapa Consolidated Bylaw: Masterton	29,000
Wairarapa Consolidated Bylaw: South Wairarapa	11,750
TOTAL POPULATION COVERED BY A BYLAW:	2,367,390
TOTAL NZ POPULATION:	5,124,100
% of POPULATION COVERED BY A BYLAW	**46.2%**

Information source: https://en.wikipedia.org/wiki/Territorial_authorities_of_New_Zealand

4.0 Bylaw comparison

4.1 Official information request – territorial authorities (councils) with a current bylaw

In August and September 2023, the same (Local Government Official Information and Meetings Act 1987, abbreviated LGOIMA) request was sent to all 16 councils who operate under the 14 bylaws currently in existence (noting Wairarapa Consolidated Bylaw covers South Wairarapa, Masterton and Carterton Councils).

In the information request, each council was asked the following questions:

1. How many current registrations are there under your 'appearance industry' bylaw?
2. How much is the registration fee for an appearance industry business to become registered?
3. How long does registration last?
4. Are renewal registrations charged a different fee from the initial fee? (If so, what is the renewal fee charged?)
5. Are these premises inspected, and if so by whom and how often?
6. Is a separate inspection fee charged, or is the cost covered by the registration fee paid by the business?
7. Have any of your premises under your appearance industry bylaw had any compliance issues between 1 July 2021 and 30 June 2023? (If yes, describe the issue without identifying the business involved)
8. Have you received any complaints relating to these industries or practices relating to operations not registered under your bylaw (ie: backyard traders) between 1 July 2021 and 30 June 2023? (If yes, briefly describe the complaint).

Below are some of the key findings and discussion from questions asked of each council.

4.1A Number of registered premises per bylaw

Approximately 1900 premises are registered throughout New Zealand currently under an appearance bylaw of some description (Table 7). Most (78%) of the registered premises are within the Auckland region, which when considering the population of this area (approximately 1.7 million people, roughly being one third of New Zealand's population), this heavily sways the numbers with the remaining thirteen bylaws only accounting for 22% of all other registrations nationwide.

Interestingly within Auckland's total registrations, 59% of these are for beauty therapist operations (which include hair removal, exfoliation, derma stamping/rolling, pulsed light and laser treatments, extractions, electrolysis, and red vein treatment). These services are indicated in the grey shaded out figures in Table 7 and included (for simplicity) under the total number of registered beauty therapists to enable more of a comparison between bylaws who simply register 'Beauty therapists' in general.

Table 7: Number of registrations and type of registration per bylaw

					Wairarapa Consolidated											
Number of registrations (by type)	**Auckland**	**Dunedin**	**Invercargill**	**New Plymouth**	**Masterton**	**Carterton**	**South Wairarapa**	**Waimate**	**Timaru**	**South Taranaki**	**Napier**	**Stratford**	**Ruapehu**	**Hutt City**	**Upper Hutt**	**Waitomo**
Hair Removal	439															
Manicure/Pedicure/ Nail Technician	358	8		5	17	1			9		7					
Tattooing	169	19	7	14	3	1	2		3	2	6	1	1			
Exfoliation	144															
Derma Rolling/Stamping	87															
Pulsed Light and laser	80			1												
Extractions	62															
Skin/Body Piercing	43	2*	4	3	1		1		2		2					
Electrolysis	37															
Red Vein treatment	24															
Sun Beds	13															
Acupuncture	12															
Cupping	7															
Traditional tattooing	4															
Moxibustion	2															
Massage				2												
Solarium					1											
Permanent makeup/cosmetic tattooing				3												
Beauty Therapy*	873	62	6	54	17	3	8	4	42	19	10	10				
Sub total					39	5	11									
TOTAL NUMBER OF REGISTERED PREMISES PER BYLAW	**1481**	**89**	**17**	**82**	**55**			**4**	**56**	**21**	**25**	**11**	**1**	**60**	**0**	**0**
OVERALL TOTAL REGISTRATIONS ACROSS ALL BYLAWS:	**1902**															
** (Includes manicure, pedicure, exfoliation, derma rolling/stamping, pulsed light and laser, extractions, electrolysis, red vein treatment)*																

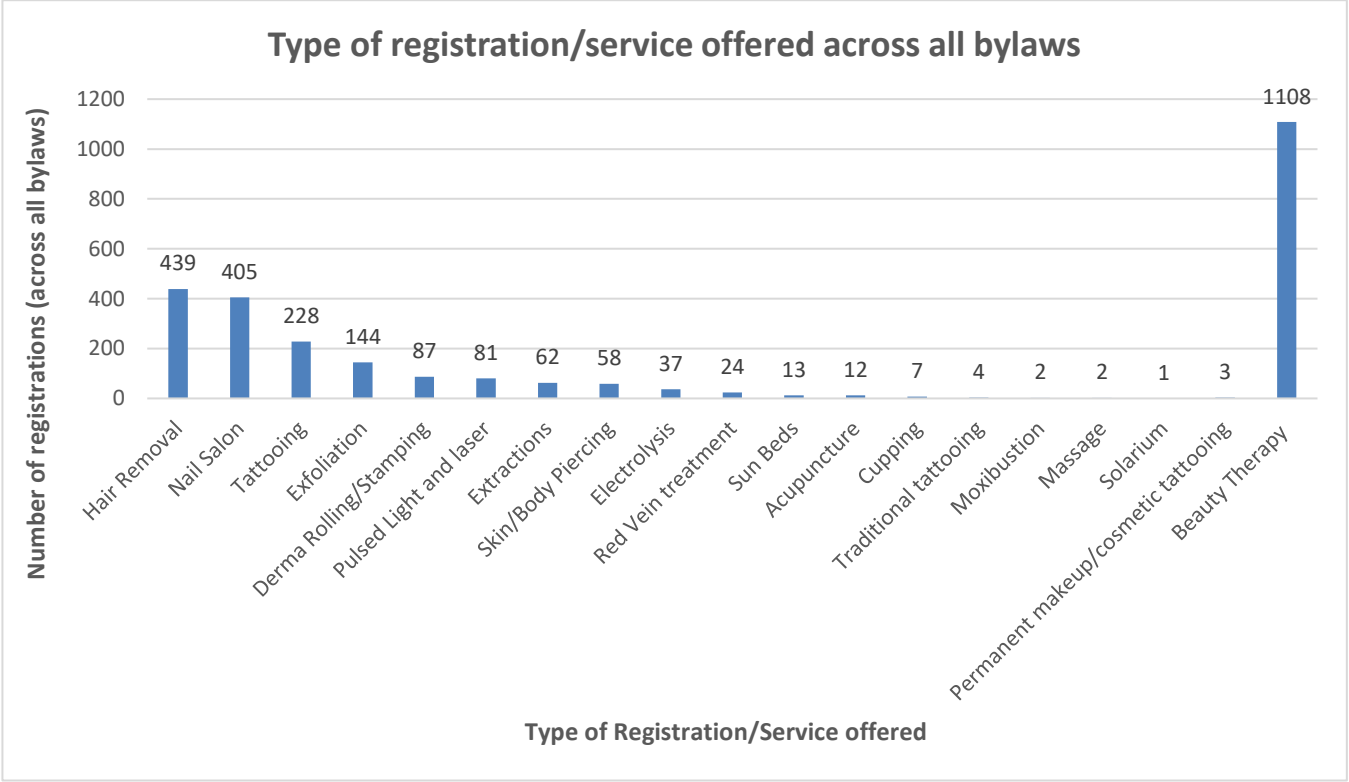

Figure 1. Type of registration/services offered across all bylaws

Of all registrations nationwide combined (1902), approximately 58% are for beauty therapists (which includes services such as: hair removal, exfoliation, derma stamping/rolling, pulsed light and laser treatments, extractions, electrolysis, and red vein treatment), 21% are for nail salons (manicure, pedicure or other nail treatments included), 12% are for tattooists (including traditional tattooing) and approximately 3% registrations undertake skin/body piercing.

These numbers are slightly variable however as some registered premises undertake multiple services such as tattooing and skin piercing under one registration/premises. It is not uncommon for beauty therapists' services to include nail services, nor is it uncommon for tattooists to also offer skin piercing services for example. For the sake of comparison, such registrations have been counted only once as either a tattooist or a skin piercer for example, as it is the total number of registrations being considered in this analysis, not the number of services offered within each registration.

4.1B Registration fees charged per bylaw

Table 8 summarises the current fees charged for registration of appearance industry businesses per bylaw, noting that all bylaw registration fees include an annual inspection within the fee. Some councils may also charge for a pre-registration or opening inspection; however, this information has not been considered within this analysis specifically. Only two councils (Masterton at $190 and Stratford District Council at $250) charge a different fee for registration renewals. Upper Hutt City Council's bylaw only came into effect on 1 July 2023, so they are currently unsure whether future registration renewal fees will differ from the initial fees, though if they were to be different, the figure of $266 was provided to give an indication of possible renewal fees charged.

Table 8: Registration fees (by type) for each Council operating under a current bylaw

					Wairarapa Consolidated											
Registration fee (By type)	**Auckland**	**Dunedin**	**Invercargill**	**New Plymouth**	**Masterton**	**Carterton**	**South Wairarapa**	**Waimate**	**Timaru**	**South Taranaki**	**Napier**	**Stratford**	**Ruapehu**	**Hutt City**	**Upper Hutt**	**Waitomo**
Single high-risk service	$485															
Multiple high-risk services	$485															
Single basic services	$298															
Multiple basic services	$400															
Standard registration		$228	$296	$166	$220	$250	$156	$215	$215	$230	$230	$375	$187	$275	$459	$252
Renewal fee different to standard registration fee?	No	No	No	No	$190	No	No	No	No	No	No	$250	No	No	$266*	No
Registration fees includes annual inspection?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
** Bylaw came into effect 1 July 2023, therefore renewal fee unknown currently – indicative fee only provided.*																

The above table provides a range of registration fees charged (albeit service/risk considered) ranging from $156 up to $485. Removing Auckland's tiered approach to fees based upon number of services offered and for simplicity referring to Auckland's fee for a single basic services registration ($298), all other bylaw fees are below $300 per year except for those of Stratford and Upper Hutt.

Interestingly, though operating under a consolidated bylaw, different registration fees are charged by South Wairarapa ($156), Masterton ($220) and Carterton ($250) Councils for essentially registering the same type of premises to comply with the same requirements of their consolidated bylaw. As a semi-comparison, Waimate (who refer to the Timaru Bylaw's Code of Practice and is one of the physical neighbour councils of Timaru), charges the same registration fee as Timaru District Council at $215 per year.

4.1C Who inspects these premises and how often?

All 14 bylaws responded to the official information request stating that Environmental Health Officers (EHOs) inspect these premises annually. The only exceptions to this were from New Plymouth and Hutt City Councils who stated that Environmental Technical Officers (not qualified Environmental Health Officers but staff undertaking some Environmental Health Officer duties) could also conduct these inspections, with Upper Hutt City Council further specifying that Trainee EHOs could also undertake such inspections. Waitomo District Council, though not currently having

any businesses registered under their bylaw, replied that Environmental Health Officers would aim to inspect these premises at least every 24 months.

4.1D Compliance issues within the past 2 years (1 July 2021 – 30 June 2023)

Over 50 complaints were received across all bylaws between 1 July 2021 and 30 June 2023, noting some of this time includes COVID-19 restrictions being in place across varying parts of the country which may have affected trading for some of these businesses. Of these, 40 complaints came from Auckland during this time, generally regarding unhygienic practices and/or from customers receiving an injury following treatment. (Auckland Council was unable to provide a full breakdown of all complaints received.) Other complaints received from outside Auckland have included:

- No running water within the premises
- Staff eating during a procedure
- Odour within a nail salon
- Poor hygiene practices
- Concerns over how a nose piercing was conducted
- A minor receiving a piercing without parental consent
- Fungal nail infection after treatment
- Referral from Te Whatu Ora (Health New Zealand) regarding suspected hepatitis infection from a tattooist
- Cleanliness of the premises (nails, waxing)
- Inadequate staff training (one business complaining about another business)
- A complaint from NZ Police regarding a suspected unregistered tattooist operating

In addition, Auckland Council provided details of 126 unregistered operators between 1 July 2021 and 30 June 2023, with 95 of these being identified during April 2022 as part of a targeted project to seek out unregistered businesses (most of which were previously registered, and their registration had lapsed) to ensure the business re-registered as required.

Auckland also provided details of two prosecutions taken under their bylaw:

- In 2021, a laser tattoo removal procedure that resulted in significant third degree burns to the client. The beauty clinic owner and the staff member who carried out the service where successfully prosecuted.
- In 2018, a tattoo parlour was successfully prosecuted after tattooing a person under the age of 18 without the written permission of their parent or guardian.

Dunedin received a customer complaint claiming a Botox treatment was being watered down, however this type of procedure is deemed exempt from their bylaw (instead covered as a medical procedure under The Health Practitioners Competence Assurance Act 2003).

Comments provided through the official information requests of what Environmental Health Officers have observed during routine inspections throughout the country include:

- Record keeping requirements not being met; e.g. customer information not kept
- Client consent forms not being completed
- Not servicing/calibrating equipment (including autoclaves) correctly
- Misunderstanding between disinfection and sterilisation practices
- Poor handwashing
- Expired ink used for tattooing
- Re-use of wax roller cartridges
- Unsterile storage practices
- Poor cleaning within premises and of equipment
- Inadequate flooring
- Lack of written procedures for accidents and bleeding

4.2 Bylaw Comparison – Desktop review

The following comparisons were made via a desktop review of all 14 bylaws, accessed by each respective council's website. Discussion is offered for some of the findings.

4.2A Date of effect – current bylaws within New Zealand

Below is a table showing when the current bylaws in existence came into effect and, where applicable, were last reviewed, amended, and updated versions came into effect (where this information was publicly available or published). All the bylaws currently in existence have been made within the last 20 years, with six bylaws coming into effect since 2018 alone (includes consolidated bylaws). Given almost half of the bylaws have been introduced (or consolidated and re-introduced) within the past five years or so, the motivations to introduce this type of bylaw would be interesting to learn, in further research.

Arguably health risks for the penetration of skin, however penetrated, have long existed and from an infection perspective, little has changed. Two key changes may have prompted more bylaws to be introduced: a change in practices/services offered throughout all appearance industries (including evolving technology), and the prevalence of these services being sought as demand grows within the population.

The rise in popularity of these services does not necessarily change the health risk associated with the practices but changes the rate of potential incidences being present and/or recorded. It may be worth considering though, that given the rise in popularity of appearance industries in the last 5 years to 2023 alone, which has led to almost double the bylaws in existence to try to regulate these industries, what will the landscape look like moving forward for the next 5-10 years and beyond?

Table 9: Date of effect of current Appearance Industry bylaws within New Zealand

BYLAW	DATE OF EFFECT	DATE LAST REVIEWED/UPDATED VERSION CAME INTO EFFECT
Auckland Council	1 July 2014	1 March 2019
Dunedin City Council	1 July 2005	1 August 2016
Invercargill City Council	1 July 2019	N/A
Lower Hutt City Council	1 October 2020	N/A
Napier City Council	2014	21 December 2021
New Plymouth District Council	2010	December 2017
Ruapehu District Council	1 January 2018	1 December 2022
Stratford District Council	31 January 2018	13 December 2023
South Taranaki District Council	1 November 2013	Amendment 13 November 2018
Timaru District Council	Consolidated Bylaw 2018, Code of practice May 2008	24 February 2021 (Document still dated 2008 however)
Upper Hutt City Council	1 July 2022	N/A
Waimate District Council	2007	2018 (Consolidated bylaw)
Wairarapa Consolidated Bylaw (Covering Carterton, Masterton & South Wairarapa)	8 July 2019 (Consolidated Bylaw)	N/A
Waitomo District Council	25 June 2014	26 February 2019

When closely studying the above bylaw dates (Table 9), in particular the dates when several bylaws were introduced or last reviewed, several bylaws will be due for renewal within the near future or have recently undergone a review. Under The Local Government Act 2002, new bylaws need to be initially reviewed 5 years after implementation date, then subsequently reviewed every 10 years thereafter.

4.3 Style of bylaw – 'Code of Practice approach' versus 'Outcomes approach'

Table 10: Current bylaws with/without a code of practice

Code of Practice Approach	Standalone Bylaw (no code of practice) approach
Auckland City Council	Dunedin City Council
Lower Hutt City Council	Invercargill City Council
Upper Hutt City Council	Napier City Council
New Plymouth District Council	Ruapehu District Council
Timaru District Council	Stratford District Council
Waimate District Council (refers to Timaru District Council's Code of Practice)	South Taranaki District Council
	Wairarapa Consolidated Bylaw
	Waitomo District Council

As evident from the table above, there is a split between the style or format the current bylaws have taken, which is almost a 40/60 split between using a code of practice or being a standalone bylaw.

Auckland seems to be the prominent bylaw following the code of practice approach that potentially other bylaws around the country that also use a code of practice approach, have replicated to

various degrees. Likewise, Dunedin was one of the first bylaws introduced originally back in 2005 and has therefore potentially acted as a benchmark for other bylaws subsequently as well, with Dunedin's bylaw following the outcomes focused bylaw style.

There are potential pros and cons to both bylaw formats. Codes of practice tend to be very detailed and prescriptive in nature, whereas stand-alone bylaws tend to be more outcomes-focused and less prescriptive. Other legislation such as the Food Act 2014 when introduced (date of effect 1 March 2016) is an outcomes-focused Act, an approach which extends to the Food Regulations 2015 which sit underneath the Act. Wording such as 'operators needing to have suitable systems in place to achieve a certain outcome' is an example of how an outcomes-focused clause could be written, as opposed to definitively saying how compliance can be achieved e.g. 'The operator must use single use disposable surgical gloves'.

Codes of practice arguably are more appropriate as an industry driven guideline, and it is likely the codes of practice within the current bylaws have been heavily influenced, if not written by industry professionals. There is potentially a fine balance between codes of practice being prescriptive to manage health risks and being so prescriptive they also become a 'how to' undertake certain procedures. When considering health, it is not necessarily the 'how' a procedure is physically undertaken that should be focused on step by step, but how 'risk' is managed during the process step by step. This line has the potential to become blurred at times, in the author's opinion.

Definitive clauses, generally within codes of practice can be good to offer clear direction towards expectations and compliance, however from an enforcement point of view, if not followed to the letter such clauses can be very difficult to enforce. When considering risk of the transfer of communicable disease, infection, and the like, does being detailed and prescriptive to the letter achieve greater compliance or lower health risks than operators who are able to demonstrate how risks are otherwise managed in their own ways? It is very hard to quantifiably say which approach works better in practice, however in the author's opinion the prescriptiveness of codes of practice do not allow for the same flexibility in changing procedures, let alone the changing landscape (in terms of services offered, new technology, consumer trends etc) that can be achieved through a more outcomes-focused bylaw.

A realistic and practical lens should (in the author's opinion) be applied to the writing of any clause within a bylaw. The question from a regulatory and enforcement perspective should always be asked, 'how can this be enforced?', alongside the question of 'what happens if operators don't do this'?

Consider for example, 'Linen needing to be as a minimum disinfected between every client' as seen in Hutt Councils Code of Practice, Part 2: 7 (Linen).

If the client was receiving a facial treatment or a leg wax with single use paper laid upon a bed covered with towels or linen, would the towels or linen have to be disinfected between that client and the next, considering the paper was the protective barrier? Whether the procedure that was undertaken would be likely to soil the linen in any way should be considered in terms of risk. No doubt some would argue yes, the linen should be changed and disinfected regardless, especially given this is what the code of practice prescribes, however is this really what happens and what would an enforcement officer realistically do if the operator used paper instead and demonstrated risk was otherwise being managed without disinfecting linen between every client? An outcomes

approach would allow the operator to demonstrate how risk is managed, which allows for a more flexible approach towards achieving the desired outcome, lowering potential health risks.

Bylaws written in an outcome or broader manner conversely, at times can be written so broadly that they do not provide enough direction for operators potentially to follow or officers inspecting these premises to enforce.

An example of this would be wording around training and qualifications. Dunedin's bylaw states (at 17.8.6) that 'an operator must ensure that where recognised qualifications are available, the operator and all employees have obtained a qualification applicable to the prescribed process being undertaken'.

This clause without other clarification, would naturally pose some questions around what is a 'recognised qualification' and recognised by whom? In Dunedin's case, an explanatory note has been added beneath this clause stating: '*Recognised training may include a national or international recognised training standard, NZQA unit standard or industry training organisation qualification.'*

This implies therefore that even an industry representative (including a salesperson selling a particular brand or type of equipment/product) could offer some form of training, albeit of their own creation, and this would be acceptable to demonstrate the employee was competent. The argument here is that 'any training is better than no training', however conversely it can be argued that not all training is equal nor necessarily comprehensive enough to claim employees are competent and managing health risks appropriately.

Whichever approach is taken to drafting a bylaw, care must be taken to ensure a practical lens is applied and whatever the desired outcome is, relates firmly back to the purpose of the bylaw.

4.4 Bylaw purposes

All current bylaws generally cover the same elements within their purpose, which is to:

- Protect the public from nuisance.
- Protect, promote, and maintain public health and safety.
- Prevent the transference of communicable diseases such as Hepatitis B and C, HIV/AIDS, and bacterial, fungal, or wound infections.

These elements are generally achieved by requiring premises to be registered and comply with the minimum standards each bylaw imposes. There is variance amongst the actual stated purpose across the bylaws, with some bylaws going into more detail than others, however the general concept is the same to protect and promote public health and prevent disease transference.

Of interesting note is the variance in terminology amongst bylaw purposes, for example South Taranaki 'Regulates' those persons and premises acting under its bylaw, whereas other bylaws such as Ruapehu 'licences' those under its bylaw 'to promote responsible citizenship'. Timaru and Waimate's bylaw purposes apply 'rules' to prevent the transference of communicable diseases and infections, whereas Invercargill is aiming to 'manage the risk' by 'requiring registration' and compliance with its bylaw requirements. Several bylaws require compliance with minimum

standards and for operators to be registered. Given the words 'register' and 'minimum standards' are used most often, this maybe the simplest way to summarise all current bylaw purposes.

However, although the purposes are in essence all in line with each other from a general concept perspective, it is clear how inconsistent the current bylaws are merely through different terminology use. Regulating, registering, licensing, and applying rules for example are all very similar concepts yet there does not seem to be a consistent term applied across the country to essentially achieve the same outcome.

4.5 Bylaw definitions, inclusions, and scope

Definitions within a bylaw have an important role to play in not only defining who or what practices the bylaw applies to, but also to assist in enforcing the bylaw itself. As with any legislation, when the meaning of a term is unknown or not clear, the first place to refer to is the definitions of that document. If no definition exists, it is commonly accepted to refer to a dictionary definition to provide some clarification about the common meaning of words and terms used.

Practices and services each bylaw specifically does/does not cover are shown in Table 11.

Table 11: Bylaw Scope: Definitions and inclusions of each current bylaw

Scope: Definitions/Inclusions	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
Acupuncture	✓		✓	✓	✓*			✓*	✓*	✓		✓	✓	
Beauty therapy	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓	
Colon hydrotherapy	✓			✓						✓				
Cupping													✓	
Derma rolling/stamping	✓			✓	✓*					✓		✓	✓	
Ear piercing				✓						✓				
Electrolysis	✓		✓	✓	✓*		✓	✓*	✓*	✓	✓	✓	✓	
Epilation				✓			✓		✓*					
Exfoliation	✓	✓*		✓						✓	✓	✓	✓	
Extractions	✓	✓*		✓	✓*		✓	✓*		✓	✓	✓	✓	
Facials								✓*		✓*			✓	
Glycolic peels								✓*		✓*				
Hair removal	✓	✓*		✓				✓*		✓		✓	✓	
Laser treatment (inc. IPL)	✓			✓	✓*			✓*		✓		✓	✓	
Manicure/Pedicure	✓	✓*		✓	✓*		✓	✓*	✓*	✓	✓	✓	✓	
Microblading				✓										
Moxibustion										✓			✓	
Nail technicians					✓*						✓		✓	
Paraffin treatments							✓				✓			
Pulsed light	✓				✓*					✓		✓	✓	
Red vein treatment	✓			✓	✓*			✓*	✓*	✓		✓	✓	
Saunas/Spas, Steam rooms								✓*						
Semi-permanent/cosmetic tattooing			✓	✓										
Skin/Body piercing	✓	✓	✓	✓	✓*	✓	✓	✓	✓	✓	✓	✓	✓	✓
Solariums					✓*						✓			
Sunbed tanning	✓							✓*						
Tattooing	✓	✓	✓	✓	✓*	✓	✓	✓	✓*	✓	✓	✓	✓	
Therapeutic massage/massage	✓							✓*		✓			✓	
Threading				✓										
Tinting								✓*		✓*				
Traditional tools tattooing	✓		✓	✓	✓*					✓		✓		
Waxing				✓	✓*		✓	✓*	✓*					

** Means not directly defined within the bylaw but mentioned within another definition indirectly.*

For every bylaw there are other definitions beyond those shown in Table 11, for more general concepts such as what an 'Approved officer' or 'premises' means. The focus of Table 11 is only the practices and services offered to determine the bylaw scope.

By identifying the practices or services each bylaw covers, it is clear the difference in approaches taken to writing each bylaw. If a practice is not clearly defined, can that practice be covered by that bylaw? For example, Invercargill's bylaw (which is intended to cover beauty therapy practices and require beauty therapist businesses to register under the bylaw), has no definition of what it means to be a beauty therapist within the bylaw. Therefore, a beauty therapy operator could rightly challenge the need to register under the bylaw when their practices are not at all defined. In this situation, how could registration be a requirement, and how could the bylaw provisions be enforced in terms of compliance? The likely situation is here beauty therapy businesses will be asked or told to register, but if challenged this would be an interesting legal argument.

Where certain practices or services have been denoted as mentioned within other definitions in the above table, this generally relates to services included in the wider definition of beauty therapy. Beauty therapy is a broad profession and covers many practices such as waxing, exfoliation, hair removal, manicures, and pedicures to name but a few. Likewise, any practices that penetrate or break the skin could be (and for some bylaws have been) included within the definition for skin/body piercing.

The challenge also presents itself to 'future-proof' a bylaw and use judicious wording, to not limit any definition to certain practices or emerging practices/services not yet known or established. Such wording often reads for example *'Beauty therapy includes but is not limited to the following (list of practices/services then specified)'*. It is important to recognise the evolving nature of the appearance industries overall, especially in relation to body modification practices which are becoming more prevalent and popular worldwide. Without robust definitions allowing for new emerging practices and services, many bylaws may have difficulties insisting on registration let alone enforcing any of their bylaw provisions both now and in the future as the industries evolve.

In general, the main definitions most bylaws cover are for beauty therapy, skin/body piercing, and tattooing followed by manicures and pedicures. Interestingly, traditional tools tattooing (which falls generally under Tikanga Māori customs) is only defined in 6 out of the 14 current bylaws. Most councils have an obligation and ties to The Treaty of Waitangi, which acknowledges and refers to tikanga Māori customs.

Unique to New Zealand, it is somewhat surprising that not all bylaws have defined traditional tools tattooing practices in some manner, given such practices are usually exempt from most of the current bylaws. To be exempt, a clear definition should be available to distinguish 'normal' tattooing from traditional tools tattooing practices. The generally accepted school of thought from the author's experience, is when traditional tattoos are offered as a commercial business (or business in trade) as opposed to being offered as more of a rite of passage or cultural gifting experience, for example on a marae when someone is surrounded by their whānau.

There is also customary tattooing such as tatau (Samoan traditional tools tattooing) which is covered by its own guidelines document produced by The Ministry of Health: The Customary Tattooing Guidelines 2010. Interestingly, tatau is not exempt from Auckland's bylaw, but would likely fall under the term 'traditional tattooing' for other bylaws, which therefore may be exempt.

When reviewing practices that very few bylaws define, the practices of cupping, moxibustion, makeup, threading and microblading have all only been defined on 1 occasion amongst the 14 bylaws. Cupping, moxibustion and makeup are all non-evasive (non-skin breaking) procedures, therefore are arguably of less risk overall. Cupping and moxibustion are also common practices seen in alternative medicines and physiotherapy treatments, which are generally exempt from this type of bylaw as well. This may explain why these practices have not been more widely defined across most of the bylaws.

Threading as a method of hair removal may be included within general definitions for hair removal in some bylaws without being otherwise specifically mentioned. Microblading is an invasive procedure as the skin is broken, however this practice could be loosely including under skin or body piercing if that definition is worded as such that it describes breaking the skin in some respect.

Acupuncture is defined in 6 out of 14 bylaws, with it also being referred to indirectly (through other definitions) in a further 3 bylaws. Acupuncture is commonly performed at physiotherapist practices, covered by the Health Practitioners Competence Assurance Act 2003, or in a traditional sense such as Japanese Acupuncture. Whilst acupuncture pierces the skin and therefore could be considered in a similar fashion to other skin piercing procedures, acupuncture is usually associated with medical practices, as is evident earlier in this report when considering the number of stand-alone acupuncturists registered under all current bylaws (unless these have been included under other registration types such as under the 'beauty therapy' umbrella instead).

There are pros and cons to over or under defining practices within a bylaw. Under defining can create challenges when registering operators and enforcing certain bylaw provisions, whereas over defining raises the question of how far or how many definitions are required? To try and define every possible practice or service offered is not realistic and can be almost so prescriptive it is limiting and does not enable flexibility to changing or emerging practices to meet each definition. From observation, the best definitions are those that give some common examples but are not limited to only those examples, which leaves flexibility for similar practices to be covered from a registration and certainly enforcement perspective.

4.6 Physical requirements

The physical requirements stated within current bylaws are set out in Table 12.

Table 12: Physical requirements stated within current bylaws

Physical requirements	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
Compliance with the Building Act 2004/Building Code	✓	✓		✓		✓	✓		✓	✓		✓		
Compliance with the Resource Management Act 1991				✓						✓		✓		
Premises construction fit for purpose	✓			✓						✓		✓		
Fixtures & appliances maintained in a state of good repair, clean & tidy condition	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Premises kept free from vermin	✓			✓						✓		✓	✓	
Premises kept free from rubbish	✓			✓						✓		✓	✓	
Covered waste receptacle shall be provided		✓			✓	✓	✓	✓	✓		✓		✓	
Walls, ceilings, fixtures & fittings kept in good repair and capable of being easily cleaned	✓	✓		✓						✓	✓	✓	✓	
Floors, walls, ceilings to be smooth & impervious	✓	✓		✓		✓	✓	✓	✓	✓		✓		
Construction materials to be light in colour									✓					
Flooring to be coved in wet areas up to a height of 75mm from the floor						✓	✓							
All floors & walls that become wet to be cleaned with suitable disinfectant at least once every 24 hours	✓											✓		
All floors & walls to be cleaned at regular intervals				✓						✓				
Premises to be supplied with potable running water	✓			✓						✓		✓		
Adequate ventilation throughout premises as per Building Code requirements	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Lighting of not less than 300 lux at 900mm above floor at all working surfaces & where tools/instruments are to be cleaned/sterilised	✓			✓								✓ *		

Physical requirements (continued)	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
All parts of the premises shall be provided with adequate and efficient lighting that enables proper cleaning and inspection of the premises		✓			✓	✓	✓	✓	✓		✓		✓	
Toilet & wash hand basin to be accessible, hygienic, clean & tidy	✓			✓						✓		✓		
Toilet wash hand basin to have hot and cold tempered running water, soap & adequate hand drying facilities	✓			✓						✓		✓		
Wash hand basin supplied with constant supply of hot & cold water at no less than 38°C, soap, single-use disposable paper towels or other approved hand-drying equipment	✓			✓				✓		✓		✓ **		
Wash hand basin to be supplied with constant hot & cold water, soap, nail brush & approved hand drying facilities in a readily accessible position		✓			✓				✓		✓	✓	✓	
Sufficient wash hand basin(s) to be supplied with constant hot & cold water, soap, nail brush & approved hand drying facilities at or near toilet facilities and working areas						✓	✓							
A hand hygiene system is implemented in a manner that is consistent with the Hand Hygiene New Zealand Implementation Guidelines			✓											
Splash guards required at wash hand basins					✓	✓	✓		✓		✓		✓	
Long lever or foot operated taps to be at wash hand basins						✓	✓							
Single use paper towels at wash hand basin or other approved hand drying device												✓		
Wash hand basin not to be near cleaner's basin or skin piercing equipment basin	✓			✓						✓		✓		
Cleaner's basin with constant supply of hot & cold running water must be provided in a readily accessible position within the working area for the sole purpose of cleaning floors, walls & fixed parts of the premises	✓	✓		✓	✓	✓ ***	✓ ***		✓	✓	✓	✓	✓	
Premises where skin is pierced must have basins in addition to wash hand basins & cleaner's sink – option to waiver this requirement if Council thinks it's unnecessary	✓			✓						✓		✓		
Separate room or area required for cleaning & sterilising of equipment. Area to have good lighting, ventilation & be capable of being easily cleaned	✓			✓						✓		✓		

Physical Requirements (continued)	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
Ultrasonic cleaners to be kept separately to sterilisation facilities & have a designated contamination area	✓			✓						✓		✓		
Mattresses, squabs & cushions to be provided with permanent impervious covers that are easily cleaned	✓			✓	✓			✓	✓	✓	✓	✓	✓	
Staff facilities to be provided with a separate room/facility to store clothing & personal effects	✓			✓		✓	✓			✓		✓		
Separate storage shall be provided for clean and soiled laundry	✓ ****	✓			✓	✓	✓	✓	✓					
Mobile facilities that pierce skin to use single use disposable instruments where sterilisation facilities are not available	✓										✓			
Separate storage of chemicals, cleaning equipment, and products when not in use		✓			✓	✓	✓	✓	✓		✓		✓	
Hazardous chemicals must be stored in accordance with HSNO Act 1996 or subsequent Act		✓				✓	✓							
Dishwashing facilities required if single use utensils are not used		✓				✓	✓	✓	✓	✓	✓		✓	
Approved dishwashing facilities means to the same standard required for a food business registered under the Food Act 2014					✓			✓						
No carpet			✓	✓										
No animals except disability dogs permitted in parts of the premises where services take place				✓	✓			✓	✓	✓	✓		✓	

* 800 mm off the floor, not 900 mm (Hutt City Bylaw lux measurement distance above floor)
** Wash hand basin water temperature to be at least 43 °C (Hutt City Bylaw)
*** Cleaner's basin water temperature to be minimum 63 °C (Waimate & Timaru District Bylaws)
**** Mobile premises requirement only (Auckland City Council Bylaw separate laundry provision. Otherwise mentioned under conduct section, not physical requirements)
✓ See commentary in report regarding carpet provisions for Invercargill & New Plymouth bylaws

Waitomo's Bylaw is the only bylaw which does not outline any physical requirements for the premises to be used for any service covered by their bylaw (relating to the appearance industries).

4.6A Basins and sinks – proximity, numbers, and type of fixture

Wash hand basins in terms of location are referred to across the different bylaws in different ways. Common wording is around these facilities being readily accessible, however what exactly readily accessible means is not defined and therefore open to interpretation. From a practical viewpoint, the closer a hand basin is to the working area, the easier it is to access and ideally be used by staff.

From an enforcement perspective though, what is readily accessible and how do you determine if a basin is not readily accessible? Would this be based on a physical distance, the need to open and close doors to gain access to the basin and/or entering/exiting into other rooms or workspaces? A degree of professional judgement should be applied from the inspecting officer, however there is the potential for inconsistencies in how hand basin accessibility is assessed. Conversely, having a formal process such as a measurement of distance between basins and the work area is not practical for most businesses in trade to apply.

Likewise, to being readily accessible, wording is often seen around having sufficient basins available. Again, what is deemed to be sufficient? Would one hand basin for several workstations or tattoo artists all working under the same roof be sufficient or would one basin be required per artist? Again, the answer lies in professional judgement in the authors opinion, but consideration for inconsistencies amongst inspecting officers (let alone bylaw interpretation and application throughout the country) must be considered.

No bylaw mentions that any basin or sink must be plumbed in or physically installed within a premises. It is not uncommon especially for newly established premises to not be able to physically install the plumbing (incoming water and/or outgoing wastewater elements) to enable enough sinks or basins to be present. Mobile hand washing units are a sensible answer, which essentially work on a two-tank system, one for freshwater and one for greywater along with needing a power connection to merely heat the water. Inspectors should in the authors opinion be open to accepting these fixtures, as they essentially meet the requirements of all bylaws in providing the means of running water to wash hands and maintain personal hygiene, which upholds the general nature of all bylaw purposes, which is to minimise the spread of communicable diseases and spread of infection.

4.6B Water temperature

The water temperature of different basin/sink fixtures also varies amongst the current bylaws. If a minimum water temperature has been stated, this is commonly stated at 38 °C as a minimum, except for 43 °C stated within Hutt City Council's bylaw.

Likewise, when referring to hot water 63 °C has been stated as the minimum temperature within some bylaws. A fair question to consider is if inspectors actually check the temperature of the water (at a hand basin or equipment sink), and if so, why? Understandably if the water temperature is not in alignment with the specific bylaw requirements (including stated minimum temperatures) then

this may be a non-compliance with the bylaw, but in other contexts what is the actual risk present? Would hot water between 55 °C and 63 °C not be just as effective as water above 63 °C for example?

The New Zealand Building Code[63] specifies:

Where hot water is provided to sanitary fixtures and sanitary appliances, used **for personal hygiene**, it must be delivered at a temperature that avoids the likelihood of scalding.

The Department of Building and Housing Compliance document for the New Zealand Building Code offers the following acceptable solution in regard to clause G12, at section 6.14.1 which may be used to offer some guidance on water temperatures[64]:

The delivered hot water temperature at any sanitary fixture used for personal hygiene shall not exceed:

> a) 45 °C for early childhood centres, schools, old people's homes, institutions for people with psychiatric or physical disabilities, hospitals, and
>
> b) 55 °C for all other buildings.

Sanitary fixtures used for personal hygiene include **showers, baths, hand basins** and **bidets.**

Therefore, a cleaner's sink would not be deemed a fixture for personal hygiene meaning the Building Code acceptable solutions compliance document offers no real clarification on minimum water temperature requirements. Commonly mixing devices (or regulators) are installed to prevent scalding from hot water, with these typically being set at a maximum of 55 °C. Irrespective of whether a mixing device is installed to prevent scalding possibly occurring, the storage water heater control thermostat shall be set at a temperature of not less than 60 °C to prevent the growth of Legionella bacteria under clause G12.3.9.

With regards to the Building Act 2004 and the Building Code, not all bylaws specifically mention the Act within their bylaws with only 8 out of 14 bylaws mentioning this. Within many industry-written Codes of Practice, such as those produced by the New Zealand Association of Registered Beauty Therapists, compliance with the Building Act and Code is specifically mentioned as being required. Compliance with The Resource Management Act 1991 clauses may soon become out of date as the current government is working on development of legislation to replace it. Therefore, several bylaws will need updating to reflect this change.

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[63] Schedule 1 of the Building Regulations 1992. (Note: Although most of the Building Regulations 1992 were revoked, their regulation 3 and Schedule 1 continue in force and remain operative).

[64] Department of Building and Housing, 2011. Compliance Document for New Zealand Building Code Clause G12 Water Supplies – Third Edition. Acceptable Solutions and Verification Methods for Clause G12 Water Supplies (effective 2 November 2023) | 3rd edition | Amendment 13 (building.govt.nz) Accessed 16/04/24.

4.6C Lighting

Two bylaws (Auckland, and New Plymouth) state that lighting must be at least 300 lux measured 900 mm off the floor. Hutt Council's bylaw is the only bylaw that states the 300 lux measurement is taken 800 mm off the floor. It is unknown to the author where the 800 mm provision has come from. Lighting in general is deemed to be acceptable in the author's experience when it is easy to see what operators are doing in any workspace or storage area, which includes having sufficient light to enable effective cleaning and inspection of an area within a premises.

Generally, if lighting is poor or insufficient, this is not measured by a light meter, but by professional judgement and an operator would be asked to improve the lighting. Therefore, what is the benefit of stating actual lux values and/or measurable distances within a bylaw? Perhaps the only benefit is to provide a universal standard for what is 'acceptable', however this again, would need to be consistently applied throughout a bylaw for all provisions and fixtures, not just lighting requirements specifically.

4.6D Flooring and carpet

None of the current bylaws outright state that carpet is prohibited within a workspace, except for Invercargill City Council's bylaw which states, "Where there is a risk of blood this may require the workspace to be free from any carpet unless otherwise covered in a disposable covering".

New Plymouth District Council's bylaw states "The floor of any area connected with the carrying out of a specified service that risks breaking the skin must be surfaced with a smooth, durable material that is impervious to water and capable of being easily cleaned." Whilst this wording implies 'no carpet' this is arguably open to some interpretation.

The key factor to consider is again risk. Carpet has the potential to increase the risk of being hard to clean and harbouring unwanted pathogens or contamination sources into the working environment. Therefore, a more suitable flooring surface which is easier to clean lowers the risk to the general environment of the premises. Also consider the practicality of some services offered such as waxing and how easy carpet would be to clean when wax is spilt.

Depending on the premises though, for example beauty therapy where multiple services are offered within the same treatment room (including facials, relaxation massage etc), carpet does create a different ambiance and customer experience. Practical solutions in this situation with multi-purpose treatment rooms, could be to lay a plastic or similar floor covering in the potentially affected area when waxing or conducting other activities, warranting a smooth floor covering being present. Again, this would come down to the conduct and management of staff within a premises to demonstrate how they manage risk, and the professional judgement of the inspector to allow such mitigation strategies to be in place if carpet or a less than ideal flooring surface was in place, such as a timber floor with large gaps between timber panels.

4.7 Training and Qualifications

Training and qualification requirements within current bylaws are set out in Table 13. From this 3 out of 14 bylaws (Auckland, New Plymouth, and Stratford) have greater requirements around training and qualifications than the other bylaws. When looking at the requirements for these 3 bylaws, these are quite specialised areas often using specific equipment and processes, where one could reasonably expect a minimum level of training is required to operate the equipment.

However, the more consistent feature of the below table is that 11 out of 14 bylaws have general provisions requiring some form of training/qualifications at all, with only South Taranaki District Council's bylaw being silent on training and qualifications at all. When general training provisions have been outlined, these are typically worded quite broadly such as employees needing to obtain recognised qualifications. Stratford Council has both general and specific provisions for training/qualifications within their bylaw.

'Recognised' training or qualifications are generally expected (and in some bylaws stated/clarified to mean) either a national or internal qualification, NZQA unit standard or equivalent. For tattooing for example there is no course or qualification that can be undertaken to the best of the author's knowledge to become a tattooist. Tattooists learn by doing and often through an apprenticeship of observing, practising and slowly developing the necessary skills to physically undertake and administer a tattoo, whether or not this is administered in a safe and hygienic way. The most relevant training for a tattooist therefore would be around infection control or a blood-borne infection course if these can be sought out and readily accessed. Without any formal requirements for such training (noting only Hutt City Council has training/qualification requirements for tattooists out of all current bylaws), arguably one of the highest risk industries covered by these bylaws, that being tattooing, requires no real training at all that is consistent, let alone enforceable to obtain.

What is deemed to be an acceptable level of training or qualification is also up for debate, especially again considering the number of territorial authorities that do not have bylaws, but where such industries will be operating. To have an 'even playing field' throughout the country is extremely difficult without any national legislation, or even consistency in training/qualification requirements amongst the bylaws that do exist.

Table 13: Training and qualification requirements within current bylaws

Training Requirements	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
Electrolysis, red vein treatment & derma rolling/stamping	✓			✓						✓				
Manicure/Pedicure	✓			✓						✓				
Exfoliation	✓			✓						✓				
Pulsed light & laser treatment	✓			✓						✓		✓	✓	
Qualifications to be displayed	✓			✓						✓		✓ *	✓ *	
Colon hydrotherapy	✓			✓						✓		✓		
General training provision outlined		✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓ **
Chemicals/dilution rates knowledge		✓	✓											
Blood policy			✓		✓					✓	✓	✓		
(Cosmetic) Tattooing, pigment implantation, permanent makeup or microblading				✓						✓				
Tattooing, body piercing & acupuncture													✓	

** (Pulsed light & laser treatment section of Code only)*
*** (Provision only applies to persons working on premises of body piercing operation)*

In terms of requiring training/qualification evidence to be displayed, doing so would likely give confidence to customers that staff are suitably trained. However, beyond creating confidence, the reason qualifications must be displayed is not overly clear in terms of the relationship between displaying qualifications to managing health risks (ie: the purpose of the bylaws).

Training around blood policies or blood-borne infection is not to be confused with a bylaw potentially requiring a blood policy to be in place as is the case for example in Dunedin City Council's Bylaw (Clause 17.13.6). Such policies in place are intended more for the management of possible infection control in relation to blood spills and prevention of blood-borne diseases such as hepatitis, HIV etc.

There would be an expectation that any staff member in an establishment would need to be aware and suitably trained under such a policy if one is required, however this is not specifically outlined in relation to training within Dunedin City Council's Bylaw. This expectation is however outlined within Upper Hutt City Council's Bylaw (Section 8.5) where it is stated that '*All Operators must have procedures for dealing with customers or staff where accidental exposure to another customer's blood or bodily fluids occurs. Procedures should also be in place to deal with incidents where*

prolonged or unexpected bleeding occurs. Such procedures must be kept on the premises in a form of a written policy and in view of the operator. All staff must be trained to comply with it.'

This comparison in how two different bylaws refer to the training expectations of certain policies, further demonstrates the different approaches and inconsistencies between bylaws and what they require for the same industries. Under the current patchwork of bylaws, a tattooist trained and authorised to work in one area of New Zealand may be restricted from operating in another area, while also remaining free to operate anywhere where no bylaw is in force.

4.8 Sterilisation versus disinfecting versus cleaning

Sterilisation requirements of current bylaws are shown in Table 14.

There is often some confusion around the difference between sterilisation, disinfecting and cleaning, especially within the appearance industries, in the author's experience. To be sterile, equipment is free from all possible pathogens or contaminants, much like surgical equipment would be in a hospital. Until opened (usually autoclave bags), the item is sterile, but once exposed to the environment (including air when the bag is opened), that equipment is no longer sterile at all. To disinfect an article is a step designed to 'kill the bugs' whereby (usually) a chemical agent is applied. The item once it has been disinfected is still however vulnerable to the environment it is in, even within a clean container – it is not sterile. Cleaning is the step easiest explained as 'removing the dirt' or other debris/matter on the equipment. Generally cleaning is the first step in the overall process, ideally followed by disinfecting as a minimum and then sterilisation in an ideal world (equipment/article depending).

Not all equipment or articles can be sterilised merely due to the design, construction, or nature of the article. Thinking of an older style tattoo handpiece as an example, there are multiple moving parts, coils, oscillating units and the like which water or excessive moisture simply should not be applied to as it will affect the overall working of the equipment itself. Older style tattoo handpieces can be taken apart, individual parts cleaned and even disinfected (with alcohol or another chemical agent usually), then reconstructed, possibly with oil or other agents used to maintain or lubricate from a mechanical perspective. But autoclaving an older (open coil) style tattoo handpiece, simply does not happen.

Some modern tattoo handpieces are becoming more enclosed, and battery operated, including being wireless and controlled using Bluetooth, however still (as a unit) cannot be sterilised. The more modern handpieces though are advanced in their design and technology to use a cartridge system for sterile needles, inserted into the handpiece with minimal (if any) real chance of backflow (of ink) occurring into the unit itself. The older style handpiece of a tattooist is therefore more exposed to the environment and potential contaminants.

During tattooing, skin is pierced/broken, and ink deposited into the sub-dermal layers of the skin. If one were to watch this process in slow motion under a microscope or extremely zoomed in lens, bursts of (often bodily) fluids including plasma, blood droplets and ink would be evident splashing up as the needle is inserted in and out of the skin. To the naked eye, this would not occur in volumes whereby obvious residue or deposits were necessarily observed, but at a microlevel there is the

occurrence, and therefore risk, of blood-borne droplets being present and covering the tattoo handpiece, client, tattooist, and parts of the surrounding environment around where the tattoo is being applied.

Keeping this example in mind highlights the importance of proper cleaning, disinfecting and sterilisation of equipment to try to minimise the potential for blood-borne and other possible sources of infection and spread of communicable disease. It also underlines the importance of use of personal protective equipment (such as gloves) when applying the tattoo or any other service administered, especially a service that breaks the skin and may possibly draw blood.

When comparing the bylaws, Waitomo District Council's bylaw again does not specify any requirements for cleaning, disinfecting nor sterilisation of equipment. Instead, this bylaw merely covers more conduct related matters such as requiring a minimum age of clients for skin piercing (16 years), and the requirements for consent and aftercare to be provided.

4.9 Sterilisation requirements across all current bylaws

Table 11: Sterilisation requirements within all current bylaws

Sterilisation requirements	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
All devices used on any mucous membrane of any customer such as a marker pen to be single use				✓				✓						
Any articles having a hollow lumen must be single-use & disposable	✓			✓										
All instruments not needing to be sterile to be cleaned/disinfected to the satisfaction of Council (via thermal or chemical disinfection procedure)	✓			✓										
Ultrasonic cleaners must comply with AS 2773.1:1998 and AS 2773.2:1999 as appropriate	✓			✓					✓ *					
All operators must display adjacent to every place used for cleaning/sterilising written instructions setting out processes to be followed to ensure compliance with sterilisation and/or ultrasonic cleaning	✓			✓										
All instruments used for piercing the skin must be sterilised after each use by cleansing them in warm water & detergent (or with an ultrasonic cleaner) followed by another process E.g. autoclave, dry heat exposure, glass bead steriliser, or some other Council approved method	✓			✓				✓						
Thoroughly cleansed and exposed to steam under pressure in a steriliser (autoclave) at: (i) 103kPa (15psi) for at least 15 minutes at not less than 121°C; or (ii) 138kPa (20psi) for at least 10 minutes at not less than 126°C; or (iii) 206kPa (30psi) for at least 4 minutes at not less than 134°C.	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

Sterilisation Requirements (Continued)	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
Tools or equipment are thoroughly cleansed and then exposed to steam under pressure in a steriliser (autoclave) in accordance with the manufacturer's instructions.		✓	✓											
Chemical indicator strips must be used	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	
Reprocessing provision mentioned (for failed autoclave/chemical indicator readings)	✓	✓	✓	✓				✓		✓		✓	✓	
Autoclave gauges to be monitored to ensure correct times, temperatures & pressures met	✓			✓	✓	✓	✓	✓		✓	✓	✓	✓	
Autoclave time, temperature & pressure readings must be recorded/noted after each usage	✓			✓		✓	✓			✓	✓	✓		
Duration autoclave records to be kept for stated (Months stated if applicable E.g. 6M = 6 months)						✓ (6M)	✓ (6M)				✓ (12M)			
Regular spore testing to occur										✓		✓		
Regular spore testing to occur no less than every 6 months with results recorded	✓			✓										
Equipment to be calibrated and serviced in accordance with the manufacturer's specifications		✓							partial	✓			✓	
Autoclave servicing/calibration timeframe specified (Months stated if applicable E.g. 6M = 6 months)	✓ (6M)		✓ (12M)	✓ (6M)										
Thorough washing in warm water & detergent then exposed to dry heat for at least 60 minutes at a minimum 170°C	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Glass bead steriliser - Thoroughly cleaned in water & detergent then totally immersed at 250°C for at least 4 minutes					✓	✓	✓		✓		✓		✓	
Glass bead steriliser - Thoroughly cleaned in cold water & detergent then totally immersed at 250°C for at least 5 minutes	✓			✓				✓		✓		✓		

Sterilisation Requirements (Continued)	Auckland	Dunedin	Invercargill	New Plymouth	Wairarapa Consolidated	Waimate	Timaru	South Taranaki	Napier	Stratford	Ruapehu	Hutt City	Upper Hutt	Waitomo
Glass bead steriliser - Thoroughly cleaned then totally immersed as per manufacturer's instructions		✓	✓											
Thoroughly cleansed by an appropriate method approved by Council (depending on the nature of the article)	✓			✓	✓	✓	✓	✓		✓	✓	✓	✓	
The tools or equipment are thoroughly cleansed by a method appropriate to the nature of the article, and then submitted to a process of sterilisation		✓	✓											
All instruments to be marked 'sterile', individually packaged or display indicator tape (or similar indicator) indicating sterility and be kept intact to maintain sterility				✓								✓		
Traditional tools (tattooing) cleaning processes outlined	✓		✓									✓		
Commentary offered on disinfectants/solutions to be used	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	

** Napier's bylaw doesn't specify compliance with AS 2773.1:1998 and AS 2773.2:1999, but gives a detailed description of how items are to be 'sterilised' using an ultrasonic cleaner (section 4.6.1 (c))*

4.9A Autoclaves

Autoclaves are units used to sterilise equipment using a combination of heat (steam), pressure and time. Essentially, the concept of an autoclave is like that of a pressure cooker, as higher temperatures can be achieved under pressure than normal steam from boiling water for example. Given the rise in popularity of single use equipment, especially within tattooists and skin piercers, autoclaves are not necessarily seen as often as they historically were. Parts of a tattoo machine, the grips, and tips (barrel and part that essentially holds the needle in place) are the most common autoclaved equipment, whereas metal (stainless steel) clamps, curved needles and the like may be autoclaved by skin piercers.

Tattoo equipment has evolved with many of these pieces (grips and tips) becoming single use plastic, or rubber being able to be purchased pre-sterilised and designed to be single use – hence negating the need to have an autoclave at all. For skin piercers, some types of needles, usually curved needles for belly button piercings or piercing particular parts of the body may not be single use, and therefore need a robust cleaning, disinfecting and sterilisation process in place.

It is generally accepted that autoclaves (depending on the make and model and chosen settings), operate at one of three settings:

(i) 103 kPa (15 psi) for at least 15 minutes at not less than 121 °C; or
(ii) 138 kPa (20 psi) for at least 10 minutes at not less than 126 °C; or
(iii) 206 kPa (30 psi) for at least 4 minutes at not less than 134 °C.

Of the above combinations, the third setting of 206 kPa (30 psi) for at least 4 minutes at not less than 134 °C is the most used combination, in the author's experience. The consideration for autoclaves is that an entire cycle does not take for example 4 minutes, rather this is the time within the cycle that the above-mentioned time, temperature, and pressure combination must be maintained for to be effective in sterilising the equipment properly. Autoclaves need time to heat up, disperse the oxygen out of the chamber (to allow the pressure to build-up), complete the sterilisation cycle, then allow oxygen to re-enter the chamber as the pressure is lowered again (also making the chamber door safe to open). Approximately, a cycle of this nature would take closer to 40 minutes total, even though the actual sterilisation process takes about 4 minutes.

Operators are meant to monitor the time, temperature, and pressure settings of their autoclave for every cycle – the more modern (and expensive) autoclaves are electronic and provide a full print out detailing the time, temperature and pressure settings throughout the entire cycle which is a huge advantage to operators. Older autoclaves however do not necessarily have this capability, so operators should be monitoring this themselves. The reality is though, to stand and observe gauges is not in the author's experience what any operator does, merely because of the impracticality of this. Instead, operators seem to rely heavily on the use of indicator strips within the load and observe a colour change in the indicator strip at the completion of the cycle to know if sterilisation was suitability achieved or not. Interestingly, Napier is the only current bylaw to not require indicator strips to be used (ie: it is not mentioned within their bylaw).

Only four bylaws require spore testing to be performed in addition to regular use of indicator strips (which are generally expected to be within each load), with Auckland and New Plymouth requiring

spore testing to be performed at least every six months (as opposed to 'regularly' as mentioned in the bylaws of Stratford District Council and Hutt City Council).

An area the author believes inspectors should focus on during visits to anyone using an autoclave, is enquiring about how loads are re-processed if a failed sterilisation is known or suspected to have occurred. Only eight bylaws currently have wording around requiring re-processing – ideally all bylaws should have this requirement within them to ensure operators can demonstrate how failed loads are re-processed, as if this is not approached correctly (or worse, ignored entirely), then the risk of possible communicable disease or infection transmission increases significantly.

4.9B Glass Bead Sterilisers

There is vast contrast in the wording around glass bead sterilisers across all the bylaws. Commonly, 250 °C for 4 minutes as a cycle time is referred to, with five bylaws requiring cycles at 250 °C for 5 minutes. Only 3 bylaws, Dunedin, Invercargill, and Waitomo do not stipulate a time and temperature for glass bead sterilisers, they merely require operators to follow manufacturer's instructions.

Many models of glass bead sterilisers run on a pre-set programme time, which can be as short as 20 seconds in duration. If an operator has a glass bead steriliser like this within their premises, they will never be able to comply with any bylaw requiring 4 or 5 minute duration cycles, unless they put the equipment through several times (which is not realistic). Therefore, there is potentially a limitation to prescribing so precisely the set cycle time for this type of equipment, remembering that though the equipment calls itself a steriliser, the equipment placed within the glass bead steriliser (usually the likes of tweezers) are not in fact sterile as soon as they are removed from the beads.

Interestingly, 4 bylaws (those of Auckland, New Plymouth City, Stratford District, and Hutt City Council) state that cold water and detergent is to be used before articles are placed within a glass bead steriliser. Why cold water specifically is referred to (as opposed to warm or hot water) is unclear.

The glass beads within glass bead sterilisers are also extremely small (the size of 100s & 1000s confectionary almost), therefore cleaning the beads is potentially quite impractical. When the beads begin to slightly discolour (become orange/bronze/copper coloured) it is a good indication it is time for new, fresh beads, in the author's experience. To monitor the temperature of glass bead sterilisers is also arguably impractical – not all probe thermometers for example will read as high as 250 °C, infrared (laser) thermometers only measure a surface temperature (and again may not read as high as 250 °C). Napier City Council's bylaws states that weekly temperatures of the glass bead steriliser are to be taken and records kept. How practical and what the value of monitoring this is would be worth exploring further, as well as how many of these operators even own a thermometer.

The question must be asked too, when considering the extreme temperature of 250 °C, if a temperature was taken and found to be slightly under the required 250 °C (say 230 °C), how much of a difference does this make when many pathogens and harmful bacteria are killed at temperatures above 75 °C, and spores killed above 120-140 °C range approximately? Again, the concept of risk must be maintained here and professional judgement when these premises are inspected. The

exact wording of some bylaws, however, may make enforcement extremely difficult – do inspectors enforce 'the letter of the law' or use their professional judgement? The latter approach of professional judgement may be more practicable, but doing so may lessen the integrity of a bylaw if it was intended to be enforced word for word.

Following the manufacturers' instructions, therefore, may be wording other bylaws consider during future reviews and indeed any Council considering implementing a bylaw in the future to allow for the difference between makes and models of equipment. The emphasis is always on the operator to demonstrate compliance, understanding and management of risk, no matter what equipment is being used. Arguably the integrity of bylaws will be stronger if some clauses within them are less prescriptive to allow for variances in equipment.

4.9C Ultrasonic cleaners

Ultrasonic cleaners are essentially a water bath with an electrical (ultrasonic) current which are designed to 'shake off' and displace microscopic debris. Few bylaws require an ultrasonic cleaner, and in reality, not all equipment is best suited to being cleaned within an ultrasonic cleaner. Napier is very prescriptive in stating an ultrasonic cleaner must be used for 20 minutes before an article is placed within a suitable disinfecting solution. Again, this is very prescriptive in stating a time for the ultrasonic cleaner to be used – how would this be evaluated in practice, and what would be the consequences of either 15 or 25 minutes in an ultrasonic cleaner being observed instead is not clear.

4.9D Dry heat sterilisation

Interestingly, 11 out of 14 bylaws (all except those of Dunedin, Invercargill City, and Waitomo Councils) still mention this method of sterilisation which is essentially a similar process to placing items in an oven at 170 °C for at least 60 minutes. Dry heat sterilisers are not overly common nowadays, in the author's experience, and for them to be effective the articles within must be thoroughly cleaned beforehand, otherwise debris will essentially become 'baked on' the equipment. Napier City Council's bylaw is the only one that requires weekly temperatures be kept for reference if this method of sterilisation is used.

Having this option for sterilisation within bylaws is not necessarily a problem, even if it is not a commonly used way to sterilise anymore, however arguably wording around having 'other processes' being followed as per manufacturer's instructions etc in reference to sterilisation could be another way to consider how this type of sterilisation could be acknowledged within a bylaw without having to be specifically outlined in detail.

4.9E Calibration and servicing

To remain effective, certain equipment used within the appearance industries should be regularly serviced and calibrated. How often equipment should be calibrated varies across the bylaws (if mentioned at all). Dunedin City Council's bylaw for example states that servicing and calibration of

equipment should be regular. What is regular? This is not defined within the bylaw, therefore suggests the frequency is either up to the operator to determine (presumably following manufacturer's instructions) or else the operator would be guided by the Environmental Health Officer or person undertaking their annual inspection. Likewise, Napier City Council's bylaw states that 'servicing records validate operational effectiveness and should be stored for reference' – how often servicing is to be undertaken and records kept for is not specified.

Auckland Council's bylaw states that such records should be kept for two years and made available on request. New Plymouth City Council's bylaw asks for records to be kept for three years and made available on request. Invercargill City Council's bylaw requires calibration records for autoclaves, UV cabinets and glass bead sterilisers be kept for 12 months whereas electrolysis servicing/calibration records shall be kept for 2 years. How UV cabinets and glass bead sterilisers are serviced and/or calibrated is not specified. Servicing could for example be interpreted as the operator changing the UV bulbs and/or glass beads within the unit, however conversely this could be interpreted as these pieces of equipment needing to be 'professionally' serviced/calibrated. Given the uncertainly and the openness for interpretation, how the servicing and calibration of the equipment is enforced would be interesting to explore further.

The bylaws of Auckland and New Plymouth City Councils also specify that autoclaves should be serviced/calibrated every 6 months, compared to that of Invercargill City Council (which is the only other bylaw to specify a timeframe for autoclaves specifically) which is 12 months. Given only seven bylaws (total) specify anything regarding calibration and servicing, and those that do specify require/state different requirements and timeframes, further highlights the inconsistency in requirements amongst the current bylaws in existence.

4.9F Traditional tools tattooing cleaning

The bylaws of Auckland, Invercargill, and Hutt City Councils are the only three that specifically outline traditional tools tattooing cleaning processes. The consensus across these three bylaws is the requirements of tools to be first scrubbed clean, then placed within an ultrasonic cleaner, soaked and scrubbed within a Perasafe (or equivalent) solution for at least 20 minutes, before being cleansed with clean water and then air dried and finally stored in a manner to maintain sterility. Perasafe is a commonly used cold water sanitising agent, dissolved in water (from powder form) which is "proven to be highly effective against viruses, mycobacteria, bacteria and bacterial spores as well as providing rapid decontamination against disease causing pathogens of concern to human health such as HIV, Hepatitis B & C, Pseudomonas aeruginosa, Clostridium difficile, and MRSA".[65]

Auckland Council (on their website) offer a 'Traditional tools tattooing code of practice,' which essentially outlines best practice cleaning, disinfection, and sterilisation processes as well as recommending other considerations around keeping a clean and hygienic workspace, personal hygiene recommendations for operators and guidance on the use of safe dyes, pigments and

[65] Lanxess website: Products and brands: Rely on products. Available from: https://lanxess.com/en/Products-and-Brands/Brands/Rely-On/Rely-On-Products/Rely-On-PeraSafe#:~:text=Proven%20Broad%20Spectrum%20Efficacy%20Independently,C%2C%20Mycobacteria%20(Tuberculosis)%2C Accessed 04/09/23.

solutions used within the traditional tattooing process.[66] Their website further refers people to the Ministry of Health's Guidelines for Customary Tattooing 2010 (available in Samoan and English translations).

4.9G Cleaning and disinfecting solutions used

All but four bylaws (those of South Taranaki District, Stratford District, Waitomo District, and Napier City Council) offer commentary and guidance around suitable cleaning solutions. This commentary sometimes is in the form of a guidance note, stating for example that chloride solutions can corrode metals and glutaraldehyde and phenol are not recommended due to potential health risks involved with their use, and that detergents should be approved by the Ministry for Primary Industries.

Other bylaws specify the types of cleaning agents or chemicals to be used. For example, Dunedin City Council's bylaw specifies "Ethyl alcohol, isopropyl alcohol, or methylated spirits (in each case containing not less than 70% alcohol); or an industrial strength disinfecting solution (such as a chlorine, phenol or Quaternary ammonium cation" shall be used (Dunedin City Council Bylaw, Section 17.16.6). There are variations elsewhere to the wording used in Dunedin City Council's bylaw; for example Ruapehu District Council's bylaw (Section 8.13.6) adds that 'Viraclean' or other similar approved solutions can also be used.

[66] Auckland Council website: Licences and Regulations: Business Licences: Health and Beauty businesses: Health and beauty business – code of practice: Traditional tools tattooing code of practice. Available from: https://www.aucklandcouncil.govt.nz/licences-regulations/business-licences/health-beauty-businesses/health-beauty-businesses-codes-of-practice/Pages/traditional-tools-tattooing-code-of-practice.aspx Accessed 04/09/23.

5.1 Summary and policy options

In the context of the ongoing demand for appearance industry procedures, the fact that many of these involve public health risks, regulation of this area will always be warranted. The current picture is that, over time, the absence of any coherent enforceable national requirements in the face of an ongoing need has driven the development of a mosaic of local authority bylaws. These bylaws now cover almost half the applicable New Zealand population in various ways but leave the other half comparatively unprotected. Against this background there are two possible futures: to continue with an assortment of bylaws, or to develop a unified consistent national approach.

Each of these are briefly considered below.

1. Maintaining the status quo: *No national legislation being introduced, but a strong likelihood of further local bylaws being created.*

Comparing New Zealand to other countries and parts of the world, for a first-world country it is interesting that national framework or regulations do not currently exist, given the popularity (and rising popularity) of the appearance industries. The current patchwork of bylaws have both similarities and differences but cover only half the New Zealand population, so that the extent of regulatory oversight varies from adequate in some areas to absent in others, and health risks depend on a person's location. *Status quo* here assumes that if nothing else happens, over time more bylaws may be enacted to progressively fill in the gaps in coverage, but without fundamentally addressing other inconsistencies.

What is potentially lacking in the decision around whether national regulations should be developed is hard evidence around the rates of infection and disease spread – the prevalence of the 'problem' that needs a regulatory 'solution'. Without being able to quantify the problem, it is potentially a hard argument to lobby for a solution such as national legislation. This report again, may not overly achieve providing that quantitative data to highlight the extent of the issue not having national legislation for these industries currently creates, but rather aims to focus more so on the local solutions (ie: bylaws) that have been implemented as a 'stop gap' measure in the absence of anything else and how variable these approaches have been and continue to be.

Whilst introducing bylaws might be seen as a solution, at least on a local level, as more and more bylaws are introduced around New Zealand, the inconsistencies in approach will no doubt continue to grow. Should this occur, the playing field may have more opponents on the field, but the landscape unfortunately will not necessarily improve in a unified way to lower the public health risk these industries present.

2. Comprehensive national legislation is developed: *A nationwide approach is taken towards regulating these industries and creating minimum standards, in the interests of protecting and promoting public health.*

The introduction of a national framework, ideally regulations governing the higher risk elements of the appearance industries (tattooing, skin piercing and beauty therapy practices in broad terms) would create minimum requirements for managing health risks and a more even playing field within these industry operators. The likely legal mechanism to introduce such regulations would be under

section 117 of the Health Act 1956 (Regulation as to public health) which allows for regulations to be made for numerous reasons, but in summary for the purpose of improving, promoting, and protecting public health.[67]

Creating minimum requirements through regulation also provides consumers with greater confidence not just in consistency throughout the country, but those operators are in theory being checked and held to account and ensuring they actively manage the risk of infection or disease spread ie: they manage public health. Some form of regulations would also enable specific risks to be addressed to enable better public health protection, whilst also offering more meaningful penalties (compared to current legislation such as the 1956 Health Act).

Introducing national legislation could however also create some uncertainty, possible resistance (to change) and additional 'front-end' and operational costs associated with policy development, regulation and compliance. These might include costs of upskilling staff, monetary registration (licensing) fees (also known as compliance costs), and the costs on councils who employ Environmental Health Officers (or staff) who would have to implement, enforce, and inspect such premises under a national framework. Taking a wider view these costs would be in exchange for reduction in the incidence of adverse health outcomes, and be offset (to a currently unknown extent) by savings to the health system.

Interestingly two national standards have been developed to protect human health under the Resource Management Act 1991 (Resource Management (National Environmental Standards for Air Quality) Regulations 2004 and Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011)

The rational for these is that the impacts of air quality on human health, and soil contamination on human health, do not vary depending on where in New Zealand someone resides. That same principle applies here to the appearance industries: human health is human health, no matter where you live.

Whichever of the two options eventuate, it would be beneficial if more data and information around the incidence rate of infection and disease spread was more widely known to help fully evaluate the extent of the current landscape and appetite (politically) for either national legislation to be introduced, or local bylaws to become more aligned and consistent.

[67] The Health Act 1956: Section 117: Regulations as to public health. Available from: https://www.legislation.govt.nz/act/public/1956/0065/latest/whole.html#DLM307994

5.2 Recommendations

Based on the findings of this work, the author makes the following recommendations:

- Ministry of Health consider initiation of a work programme to explore development of nationally consistent regulations for the protection of public health in the appearance industries.

- Councils with a current bylaw review other bylaws currently in existence with an aim of identifying what has worked well and where gaps still exist, whilst explaining and offering a minimum and recommended set of best-practice provisions, and achieving greater consistency.

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