

## **Health and Hygiene Bylaw 2013 Review**

### **2018 Options report**

#### **Introduction**

This report analyses the options available to council in response to the statutory review of the Auckland Council Health and Hygiene Bylaw 2013 (Bylaw).

The report draws on the “Auckland Council Health and Hygiene Bylaw 2013: 2018 Review Findings Report”. Staff presented the findings of the statutory review to the Regulatory Committee on 12 April 2018. The Regulatory Committee endorsed the following key findings (decision no. REG/2018/21):

- services that contact the body continue to pose health risk, including the transfer of viral and bacterial infections, cancer and injury to the body
- new services emerge at a fast pace and not all are appropriately regulated by the Bylaw
- the Bylaw and its implementation have effectively minimised most public health risks
- stakeholders agree the Bylaw minimises public health risks and could be improved
- health risks are managed by licenses and minimum standards.

The options considered in this report flow from these findings.

#### **Executive summary**

To enable Auckland Council to decide how to respond to the findings from the statutory review of the Auckland Council Health and Hygiene Bylaw 2013 (Bylaw), staff assessed options using Local Government Act 2002 criteria, including:

- Option 1: status Quo - service type bylaw framework supported by separate Code
- Option 2: amended service type bylaw framework supported by separate Code
- Option 3: risk-based bylaw framework supported by Code
- Option 4: respond to complaints only using Health Act 1956.

Staff recommend Option 2 because it:

- further minimises health risks by covering a broader range of current and new services, including services that risk breaking or burning membranes, water play parks and massage
- improves on the status quo (Option 1) which stakeholders consider effective and certain
- is more efficient than Option 3 because it can be achieved without additional resourcing or implementation costs
- would make the tā moko exemption clearer
- would better recognise traditional Pacific tattoo
- would require operators to display a health licence.

Option 3 would also further minimise health risks and cover any unanticipated future services without requiring a bylaw amendment. However, the key trade-offs are:

- risk of incorrectly classifying services because of a lack of reliable data
- operational risks as a risk-based approach is untested for these industries
- additional resourcing, expert advice and implementation costs. The estimated starting cost for initial expert advice is \$70,000.

Staff consider the risk of future services not being covered under Option 2 is small and can be mitigated by amending the Bylaw. In addition, both Options 2 and 3 would require updates to the Code to ensure there are minimum standards for new services.

Option 4 was discounted because it does not respond to the problems, objectives and desired outcomes.

## Status quo and problem definition

### Status quo

The current bylaw (status quo) is a service type bylaw framework which:

- defines four service types: services that pierce the skin, risk breaking the skin, risk burning the skin, and other specified services (e.g. beauty treatments, body modification, sunbeds)
- identifies which service types require a licence (all except other specified services)
- identifies which service types must comply with minimum standards (all services)
- enables minimum standards to be adopted in a separate code of practice (Code)
- identifies exemptions (e.g. health practitioners).

### Original problem statement and status quo

When the Bylaw was made staff defined the original problem as:

“inconsistent protection from health and hygiene risks for persons using or administering services that pierce the skin, risk breaking the skin, risk burning the skin, or involve risks of infection.”

The current bylaw was introduced to respond to this problem by amalgamating all legacy bylaws to provide a single bylaw for services for the whole region.

### Current and future problem

The current problem is that not all services that risk transferring infection or causing injury are covered by the bylaw. In addition, some services that are already covered by the bylaw, such as pedicure services, are still causing health problems.

Services pose a range of health risks to the public as they pierce or contact the skin and other tissues. Common health risks include:

- blood borne infection (e.g. hepatitis B and C)
- bacterial infections (e.g. staphylococcus)
- fungal infections (e.g. tinea, candida)
- gastrointestinal infection (e.g. campylobacter, E.coli)
- allergic reactions and chemical poisoning (e.g. piercing metals, tattoo ink)
- burning and damage to skin and eyes (e.g. laser, intense pulsed light)

- cancers (e.g. melanoma from sun-bed use)
- injury to the body (e.g. damage to eyesight, tissue or organ damage).

Such health risks can be heightened where:

- premises are not kept clean and hygienic
- equipment is not properly sterilised between customers
- contaminated materials are not disposed of appropriately
- operators do not have sufficient training to use equipment properly
- medical grade equipment and materials are accessible online
- customers have an impaired immune system, potentially because of long-term illnesses such as diabetes

The current Bylaw framework restricts council's ability to cover all services through the limited definitions of services types, for example services that "risk breaking the skin", and the Code needs to be updated to include specific standards for new services.

Without further intervention, the public will continue to be harmed in future as new treatments and techniques are introduced at a rapid pace.

### **Scale and magnitude of the problem**

The services that are not currently regulated by the bylaw either because of service type definition or lack of specific minimum standards for the service include:

- eyeball tattoo
- platelet-rich plasma injections
- vaginal laser treatments
- ultrasound and cooling pressure panels
- derma-blading
- permanent acupuncture
- waterplay parks
- massage.

Except for waterplay parks and massage, the number of people potentially harmed by unregulated new services is low. However, the potential consequences of unsafe practice for services such as eyeball tattoo and platelet-rich plasma injections are significant (e.g. permanent blindness and transfer of Hepatitis B and C).

Waterplay parks and massage have a wider potential impact than the other services. However, the level of potential harm is lower. Waterplay parks have the same risks as swimming pools which are subject to minimum standards under the bylaw and are frequented by children who are vulnerable to infections such as gastroenteritis. Massage is one of the most commonly used forms of complementary medicine. A high number of ACC claims (35,370 in 2012-2017) have been made in Auckland for massage related injury, mostly involving soft tissue injury.

Pedicure is currently regulated by the bylaw but is still causing health problems. Most complaints received by council were about manicure/pedicure services (estimated 80) and ACC claims for pedicure increased 90 per cent between 2012-2016. Anecdotally a large

number of people use manicure/pedicure services and the number of premises and employees has increased.

### Stakeholder view of problem

Stakeholders (including health experts, Environmental Health officers and industry organisations) consider services continue to pose risks to the community, particularly where appropriate sterilisation and hygiene practices are not observed.

Auckland Regional Public Health Service identified that in many circumstances it can be difficult to link resulting infections to an operator.

### Objectives

The objectives of a regulatory response to this problem are to:

1. minimise health risks to reduce harm to people using commercial services that involve contact with the human body, including by:
  - (i) ensuring comprehensive coverage of both current and emerging services that pose health risks.
2. meet legislative requirements under the Local Government Act 2002 including:
  - (i) giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)
  - (ii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (sections 155 and 160).

These objectives are aligned with the council's obligations under the Health Act 1956 to "improve, promote and protect public health within Auckland" and the Auckland Plan strategic direction to "improve the education, **health** and safety of Aucklanders, with a focus on those most in need."

### Outcomes

The key desired outcome is that the public are protected from harm caused by services that contact the body.

## Options

Staff identified the following options to achieve the outcome sought:

- Option 1: status quo – service type bylaw framework supported by separate Code
- Option 2: amended service type bylaw framework supported by separate Code
- Option 3: risk-based bylaw framework supported by Code
- Option 4: respond to complaints only using Health Act 1956. This option does not respond to the problems, objectives and outcomes set out above. However, council needs to consider whether the current bylaw should be revoked when reviewing a bylaw under the Local Government Act 2002.

A more detailed description of the options is provided below.

Two other options were identified (bylaw that includes minimum standards and industry self-regulation) but excluded from any further assessment:

- A bylaw that includes all minimum standards for services (not in a separate code): This option was excluded because it would be less flexible than Options 1-3. Options 1-3 allow the Code to be updated by the Regulatory Committee in response to changes in technologies and treatments. This is more efficient than amending the Bylaw through the Governing Body which is likely to require a special consultative procedure under the Local Government Act 2002.
- Industry self-regulation (i.e. revoke the Bylaw and not respond to complaints): This was excluded because the council has a duty to improve, promote and protect public health under the Health Act 1956. Option 4 provides a viable alternative that revokes the Bylaw and instead relies on powers under the Health Act 1956 to respond to complaints.

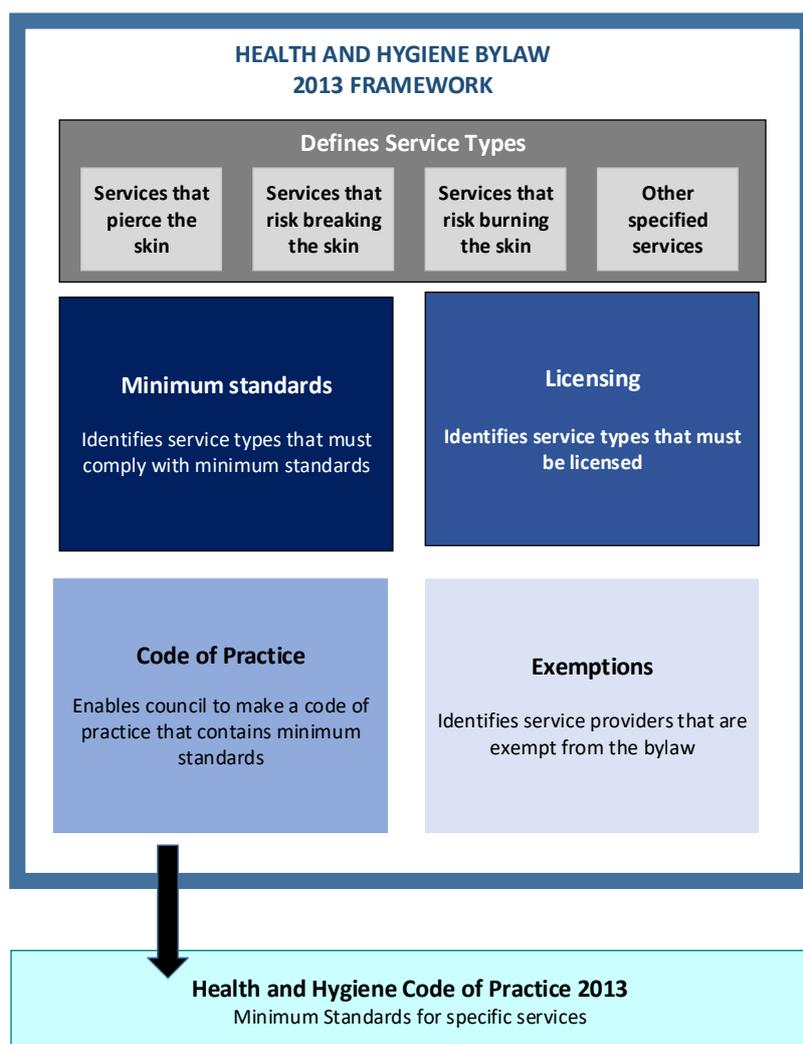
### Option 1: status quo – service type bylaw framework supported by Code

#### Bylaw form

Option 1 retain the current service type bylaw framework (Figure 1) which:

- defines four service types: services that pierce the skin, risk breaking the skin, risk burning the skin, and other specified services (e.g. beauty treatments, body modification, sunbeds)
- identifies which service types require a licence (all except other specified services)
- identifies which service types must comply with minimum standards (all services)
- enables minimum standards to be adopted in a separate code of practice (Code)
- identifies exemptions (e.g. health practitioners).

**Figure 1: Current bylaw framework**



**Code of practice**

The Code would be reviewed in 2019 following the confirmation of the current Bylaw.

**Implementation**

Approximately 81 per cent of inspection and administrative costs would continue to be recovered from licensing fees. The cost of responding to complaints are not cost recoverable.

*Compliance and enforcement*

Operators are required to be licensed and comply with minimum standards.<sup>1</sup> Environmental Health officers carry out annual licensing inspections and respond to complaints. Currently there is 95 percent compliance with minimum standards on inspection.

The Environmental Health Unit takes a graduated enforcement approach to Bylaw compliance. This is based on members of the public voluntarily choosing to conform. While the ultimate enforcement tool under the Bylaw is prosecution, officers seldom use this option.

<sup>1</sup> Except operators of swimming pools and colon hydrotherapy which need only comply with minimum standards.

Any enforcement action is taken under the Local Government Act 2002<sup>2</sup> or Health Act 1956.<sup>3</sup> A maximum fine of \$20,000<sup>4</sup> may be sought under the Local Government Act 2002, or a maximum fine of \$500 and \$50 per day under the Health Act 1956.<sup>5</sup>

Where an operator offers sun-bed services to a customer under 18 years, officers can continue to issue an infringement notice and require operators to pay \$10,000 infringement fee under the Health Act 1956.<sup>6</sup>

## Pros and cons

### Pros

- Proactively minimises health risks by requiring operators to comply with the Code and inspections to ensure compliance.
- Most operators comply with the bylaw and code on inspection.
- Stakeholders support the existing bylaw which is considered effective and certain.
- The Bylaw framework and code are flexible as the Code can be changed by the Regulatory Committee.
- Prosecution under the Local Government Act 2002 can result in a higher fine than under the Health Act 1956 with a greater deterrent effect.
- Compliance costs are low as 81 per cent licensing costs recoverable.
- Recognises importance of tā moko by exempting from Bylaw.

### Cons

- Bylaw and Code do not expressly cover new services, such as eyeball tattoo.
- Categorisation of services by service type does not clearly identify health risks or provide a graduated enforcement response related to that risk.
- Code must be continually updated to ensure new services are properly regulated.
- Ongoing compliance problems with pedicure services and unlicensed services.
- Stakeholders (including health experts) consider it could be improved, including to better regulate new services.
- Tā moko exemption does not reflect actual practice and does not include reasons for exemption.

## Risks

There is a current and future reputational risk to council because new services are not regulated by the Bylaw or Code (e.g. eyeball tattooing and dermal fillers).

### *Mitigation*

- Public information made available about the practical application of the Bylaw and Code.
- Timely updates to the Code.

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<sup>2</sup> Local Government Act 2002, sections 162-188.

<sup>3</sup> Health Act 1956, sections 33-42.

<sup>4</sup> Local Government Act 2002, section 242.

<sup>5</sup> Health Act 1956, sections 33 and 66.

<sup>6</sup> Health Act 1956, sections 114-116B.

## Option 2: amended bylaw supported by Code

### Bylaw form

This option improves on the current service type bylaw framework in Option 1 by:

- amending all service types and definitions to include reference to “skin” and “tissue”
- including massage as an “other specified service” and require operators to comply with minimum standards
- prohibiting eyeball or scleral tattoo unless carried out by a health practitioner
- changing the definition of “swimming pool” to include “water play parks”
- requiring operators to display health licence
- clarifying the tā moko exemption to remove reference to “non-commercial” and include reasons for the exemption
- amend bylaw to more clearly recognise the significance of traditional Pacific tattoo.

A more detailed assessment of the above amendments is contained in Table 2.

### Code of practice

The Code can be reviewed following amendments to the current Bylaw.

### Implementation

Implementation, licensing and compliance would be the same as Option 1.

### Pros and cons

#### Pros

- Proactively minimises health risks by requiring operators to comply with the Code and inspections to ensure compliance.
- Amending service type definitions include all services with health risks of concern.
- Stakeholders (including Environmental Health officers) support an improved existing bylaw framework as it is considered effective and certain.
- Stakeholders support minor improvements, including changes to definitions and exemptions.
- The Bylaw framework and code are flexible as the Code can be changed by the Regulatory Committee.
- Prosecution under the Local Government Act 2002 can result in a higher fine than under the Health Act 1956 with a greater deterrent effect.
- Compliance costs are likely to be similar to option 1.
- Recognises importance of tā moko by exempting from Bylaw. Exemption would be clarified to reflect practice and include reasons for exemption.
- Better recognises traditional Pacific tattoo.

#### Cons

- Categorisation of services by service type does not clearly identify health risks or provide a graduated enforcement response related to that risk.
- Code must be continually updated to ensure new services are properly regulated.
- On their own, improvements are unlikely to address ongoing compliance problems with pedicure services and unlicensed operators.

#### Risks

Small risk that future emerging services are not clearly regulated by the Bylaw or Code.

#### Mitigation

- Public information made available about the practical application of the Bylaw and Code.
- Timely updates to the Code.

### Option 3: risk-based bylaw framework supported by Code

#### Bylaw form

This option would make a new bylaw that regulates services based on the risk posed to public health (see Figure 2) which:

- defines four risk categories: very high, high, moderate or low-risk
- identifies which risk categories require a licence
- identifies which risk categories must comply with minimum standards
- enables minimum standards to be adopted in a separate code of practice (Code)
- identifies exemptions (e.g. health practitioners).

The level of risk would be determined using a risk matrix that includes potential harm caused by the service and the potential frequency of this harm. Prior to drafting, staff would need to further investigate the risk assessment process and receive guidance from health risk assessment experts. Obtaining supporting scientific analysis (similar to the Food Act 2014 risk assessment) would cost upwards of \$70,000.

The new bylaw would also include the following improvements from Option 2 (see Table 2 for assessment of amendments):

- require operators to display a health licence
- clarification of any tā moko exemption
- ensuring the bylaw recognises traditional Pacific tattoo.

**Figure 2: Risk-based bylaw framework (Option 3)**



### **Code of practice**

The Code will be replaced in 2019 with a new Code that categorises services by risk with general standards related to risk level.

### **Implementation**

Implementation would be similar to Options 1 and 2. The main change will be an additional requirement for the Environmental Health Unit to:

- undertake a risk assessment for all existing and new services
- develop and maintain a schedule of services classified by risk
- identify which services are licensed, comply with minimum standards, or are exempt
- reassess the health risks of existing services if there is a change in practice that affects risk.

Risk assessment costs would not be recovered under the current fee structure.

### *Licensing and compliance*

The same licensing and compliance regime would apply and enforcement options would be the same as Options 1 and 2.

### **Pros and cons**

#### Pros

- Proactively minimises health risks by requiring operators to comply with minimum standards and inspections to ensure compliance.
- New services are regulated by the bylaw even if outside current service types.
- Clear rationale for regulatory response as directly relates to health risk.
- Reflects regulatory trend towards risk-based models.
- The bylaw framework and code are flexible as minimum standards can be changed by the Regulatory Committee.
- Prosecution for bylaw under the Local Government Act 2002 can result in a higher fine than under the Health Act 1956 with a greater deterrent effect.
- Recognises importance of tā moko by exempting from Bylaw. Exemption would be clarified to reflect practice and include reasons for exemption.
- Better recognises traditional Pacific tattoo.

#### Cons

- Environmental Health officers do not support this approach as it is a fundamental change to the current bylaw framework which is effective and certain.
- Implementing a risk-based bylaw framework would require extensive policy and operational research and development (e.g. Food Act 2014).
- Increased demand on operational resources for ongoing health risk assessments.
- Need to replace bylaw as requires a significant change in approach to regulating services.
- Further bylaw review required five years after bylaw made.

### **Risks**

- Risk of incorrectly classifying services because of a lack of reliable data
- Operational risks as risk-based approach is untested for these industries.
- Reputational risk if service operators object to risk assessment or risk assessments not carried out promptly for new services.

### *Mitigation*

- Ensure risk assessment is robust.
- Public information about the risk assessment process and the practical application of the Bylaw and Code.
- Timely updates to the Code.

## Option 4: respond to complaints using Health Act 1956

**Option 4 does not respond to the problems, objectives and outcomes set out above. However, council needs to consider whether the current bylaw should be revoked when reviewing a bylaw under the Local Government Act 2002.**

Option 4 would revoke the Bylaw. Environmental Health Officers would instead rely on existing powers under the Health Act 1956 to investigate and take action where a health nuisance complaint is made about a service.

### Code of practice

The Code will be revoked on the date the Bylaw is revoked.

### Implementation

Environmental Health officers would no longer carry out licensing inspections and any non-recoverable costs from this regime would be removed. However, officers would still be required to carry out complaints inspections which are fully funded by rates.

#### *Licensing and compliance*

Officers would rely on their powers under the Health Act 1956 to inspect operator premises and take enforcement action where there is a nuisance or any condition likely to be “injurious to health”.<sup>7</sup>

It is an offence to cause or permit a nuisance under the Health Act 1956 (maximum fine \$500 and \$50 per day).<sup>8</sup> Where an operator offers sun-bed services to a customer under 18 years, officers can issue an infringement notice and require operators to pay \$10,000 infringement.<sup>9</sup>

### Pros and cons

#### Pros

- Reduced compliance costs to business.
- Reduced implementation costs in the short term as officers not required to run licensing programme.

#### Cons

- Risk of harm is not minimised (and may increase) as harm likely to occur before officers act.
- Health Act 1956 provides less deterrence for poor practices as lesser penalty than under Local Government Act 2002.
- Stakeholders do not support option given the potential health risks and increased harm.
- Potential uncertainty for operators and council officers because there would be no clear standards to comply with or be assessed against.
- Likely increase in complaints which in medium to long term will increase costs to ratepayers for non-recoverable inspections.
- Health Act 1956 does not require consideration of implications for Māori.

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<sup>7</sup> Health Act 1956, sections 33-42.

<sup>8</sup> Health Act 1956, sections 33 and 66.

<sup>9</sup> Health Act 1956, sections 114-116B.

## Risks

- Risk of harm is not minimised (and may increase) as harm likely to occur before officers act.
- Reputational risk if public concerned about council reducing health protection.
- Future reputational risk if council needs to make new bylaw to address likely increase in complaints.

## Mitigation

- Promoting good practice using non-regulatory tools (e.g. the Code could become a guideline).

## Options assessment

### Preliminary legal assessment

Bylaws must comply with certain legal requirements to be valid, including: that they are authorised by statute, and are not repugnant or unreasonable. Staff consider all four options meet these preliminary legal requirements.

### New Zealand Bill of Rights Act 1990 assessment

Options 1, 2 and 3 raise potential limitations to freedom of expression. However, these are justified limitations because of the significant public health risks the bylaw seeks to minimise. Therefore, there are no implications and the options are not inconsistent with the New Zealand Bill of Rights Act 1990.

Option 4 does not require the preparation of a bylaw and therefore a New Zealand Bill of Rights Act 1990 assessment is not required.

### Assessment against criteria

Staff have completed a comparative assessment against criteria. These criteria reflect the objectives of a regulatory response to this problem identified above:

1. minimise health risks to reduce harm to people using commercial services that involve contact with the human body, including by:
  - (i) ensuring comprehensive coverage of both current and emerging services that pose health risks
2. meet legislative requirements under the Local Government Act 2002 including:
  - (i) giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)
  - (ii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (section 155).

The criteria and a summary of the assessment is shown in Table 1. The “✓” and “x” reflect the impact of the option against each criterion relative to other options. For instance, the more “✓”, the better the option.

Table 1: Summary of assessment of options against stated objectives

	Effectiveness at minimising health risks	Efficiency at minimising health risks
<b>Option 1:</b> <b>status quo – service type bylaw framework supported by Code</b>	✓ While the status quo proactively minimises health risks, some services are not included because of service type definitions (e.g. vaginal laser treatment and massage) and there is potential for harm to occur.	✓✓ The status quo is efficient as the code can be easily updated and the operational cost to ratepayers of licensing is low (\$54,953) because 81% (\$242,522) of costs are recovered from licensing fees.
<b>Option 2</b> <b>amended bylaw supported by Code</b>	✓✓ Option 2 would further minimise health risks by amending service type definitions to cover all current and emerging services identified by the review.	✓✓ Option 2 is efficient as it maintains code flexibility and is unlikely to increase the status quo operational cost which would be 81% recoverable.
<b>Option 3</b> <b>risk-based bylaw framework supported by Code</b>	✓✓ Option 3 would further minimise health using a health risk assessment to cover all services that meet threshold levels of risk.	× Option 3 is less efficient than status quo and Option 2 because it would require: <ul style="list-style-type: none"> <li>• expert research and development of risk-based framework (estimated <b>initial</b> cost of at least \$70,000)</li> <li>• ongoing health risk assessments</li> <li>• a further bylaw review within five years (instead of 10 years under Options 1 and 2).</li> </ul>
<b>Option 4</b> <b>respond to complaints using Health Act 1956</b>	×× Option 4 would not minimise health risks (which may increase) as harm must occur before officers act.	×× Option 4 is the least efficient as it is likely to result in increased complaints which in the medium to long term will increase costs to ratepayers for non-recoverable complaints inspections.

## Analysis and recommendations

Based on analysis against assessment criteria and the pros and cons of each option, staff recommend **Option 2: amended bylaw supported by code** because it:

- further minimises health risks by covering a broader range of current and new services, including services that risk breaking or burning membranes, water play parks and massage
- improves on the status quo (Option 1) which stakeholders consider effective and certain
- is more efficient than Option 3 because it can be achieved without additional resourcing or implementation costs
- would make the tā moko exemption clearer
- would better recognise traditional Pacific tattoo
- would require operators to display a health licence.

Option 3 (risk-based bylaw framework) would also further minimise health risks and cover any unanticipated future services without requiring a bylaw amendment. However, the key trade-offs are:

- risk of incorrectly classifying services because of a lack of reliable data
- operational risks as a risk-based approach is untested for these industries
- additional resourcing, expert advice and implementation costs. The estimated starting cost for initial expert advice is \$70,000.

Staff consider the risk of future services not being covered under Option 2 is small and can be mitigated by amending the Bylaw. In addition, both Options 2 and 3 would require updates to the Code to ensure there are minimum standards for new services.

Option 1 (status quo) is effective and certain but does not regulate new services that are covered in Options 2 and 3.

Option 4 (respond to complaints using Health Act 1956) is the least effective option because harm is likely to have occurred before council responds and the cost of responding to complaints cannot be recovered from operators.

Table 2: Detailed assessment of potential Option 2 bylaw amendments

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
<p><b>Include massage as other specified service</b> (Recommended)</p> <p>must comply with minimum standards but not required to be licensed.</p>	<ul style="list-style-type: none"> <li>Ensures massage regulated and responds to high number of ACC claims.</li> <li>Can raise training and qualification standards through minimum standards in Code.</li> <li>Less inspections required than if licensed.</li> <li>Avoids over-regulation of lower-risk industry.</li> </ul>	<ul style="list-style-type: none"> <li>As not licensed will not be inspected unless complaints made.</li> <li>Minimum standards that require training or qualifications could increase compliance costs for operators.</li> </ul>	<ul style="list-style-type: none"> <li>Council perceived as over-regulating a relatively low-risk service.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>Ensure stakeholders consulted during drafting and special consultative procedure.</li> </ul>	<ul style="list-style-type: none"> <li>Staff have not identified any limitations to the rights and freedoms protected under the New Zealand Bill of Rights Act 1990. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>
<p><b>Require that eyeball tattoo only carried out by health practitioners</b> (Recommended)</p>	<ul style="list-style-type: none"> <li>Protects public from very-high risk of permanent blindness.</li> <li>May reduce number of people seeking eyeball tattoo before it becomes popular.</li> <li>Unlikely to have an impact on licensing and compliance resourcing.</li> <li>Protects vulnerable people (e.g. youth) from blindness and/or irreversible changes to eye colour.</li> </ul>	<ul style="list-style-type: none"> <li>Overall effectiveness limited as may have procedure done outside of Auckland.</li> </ul>	<ul style="list-style-type: none"> <li>Council perceived as interfering with people's physical autonomy.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>Ensure stakeholders are informed and consulted during drafting and special consultative procedure.</li> </ul>	<ul style="list-style-type: none"> <li>There are potential limitations to freedom of expression as it is unlikely that a health practitioner would agree to perform the service. However, these limitations are justified because of the health risks this amendment seeks to minimise.<sup>10</sup> Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>

<sup>10</sup> Health risks include retinal detachment, perforation and eye infections that may lead to blindness. See Auckland Council Health and Hygiene Bylaw 2013: 2018 Review Findings Report in Agenda for the Regulatory Committee meeting on 12 April 2018 for further details.

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
<p><b>Change definition of “swimming pool” to include “water play parks” and “splash pads”</b></p> <p><b>(Recommended)</b></p> <p>must comply with minimum standards but not required to be licensed</p>	<ul style="list-style-type: none"> <li>Regulation would minimise health risks which are similar to swimming pools (e.g. gastroenteritis).</li> <li>Ensures any future private water play parks are properly regulated.</li> <li>Will not increase number of inspections as not required to be licensed.</li> <li>Council operated water play parks already treated like swimming pools.</li> <li>Protects children from infections.</li> </ul>	<ul style="list-style-type: none"> <li>None identified.</li> </ul>	<ul style="list-style-type: none"> <li>Council perceived as over-regulating a relatively low-risk service that is currently only operated by council.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>Ensure stakeholders consulted during drafting and special consultative procedure.</li> </ul>	<ul style="list-style-type: none"> <li>Staff have not identified any limitations to the rights and freedoms protected under the New Zealand Bill of Rights Act 1990. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>
<p><b>All service types and definitions include reference to skin and “tissue”</b></p> <p><b>(Recommended)</b></p>	<ul style="list-style-type: none"> <li>Ensures services that impact membranes (e.g. vaginal laser treatment) are regulated and health risks minimised.</li> <li>Removes current ‘loop- hole’ in Bylaw.</li> <li>Officers already inspecting operators that carry out these types of services.</li> <li>Protects women accessing these services.</li> </ul>	<ul style="list-style-type: none"> <li>None identified.</li> </ul>	<ul style="list-style-type: none"> <li>None identified.</li> </ul>	<ul style="list-style-type: none"> <li>Staff have not identified any limitations to the rights and freedoms protected under the New Zealand Bill of Rights Act 1990. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>
<p><b>Require operators to display health</b></p>	<ul style="list-style-type: none"> <li>Raises public awareness of requirement to be licensed.</li> <li>Public more likely to contact the council if no licence</li> </ul>	<ul style="list-style-type: none"> <li>None identified.</li> </ul>	<ul style="list-style-type: none"> <li>Public think licence means the council is vouching for the quality of the service.</li> </ul>	<ul style="list-style-type: none"> <li>There are potential limitations to freedom of expression. However, these limitations are justified because of the public health</li> </ul>

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
<p><b>licence</b> <b>(Recommended)</b></p>	<p>displayed.</p> <ul style="list-style-type: none"> <li>Operators see commercial value of licensing to attract customers.</li> <li>Increased public knowledge of protections under Bylaw.</li> </ul>		<p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>Licence clearly explains does not verify quality of service, only that complies with minimum standards.</li> </ul>	<p>education function of the amendment. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</p>
<p><b>Introduce operator grading similar to food premises</b> <b>(Not recommended)</b></p>	<ul style="list-style-type: none"> <li>Raises public awareness of requirement to be licensed.</li> <li>Public can assess differences in standards between operators.</li> <li>Operators see commercial value of licensing and improving standards to attract customers.</li> <li>Increased public knowledge of protections under Bylaw as ratings often attract publicity.</li> </ul>	<ul style="list-style-type: none"> <li>Assessment of whether operator meets hygiene minimum standards better suited to “pass-fail” regime.</li> <li>Allowing lower grade services to operate may increase health risks for public than if pass/fail test applied.</li> <li>Will require development of grading scheme for each specific service.</li> <li>More complicated inspection process that could appear to assess quality of services.</li> </ul>	<ul style="list-style-type: none"> <li>Public think grading relates to quality of the service.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>Licence clearly explains does not verify quality of service, only that complies with minimum standards to certain grade.</li> </ul>	<ul style="list-style-type: none"> <li>There are potential limitations to freedom of expression. However, these limitations justified because of the public health education function of the amendment. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
<p><b>Update Code</b> <b>(Recommended)</b></p>	<ul style="list-style-type: none"> <li>• An up-to-date Code will better enable operators and officers to minimise public health risks.</li> <li>• Ensures all members of the public are protected by up-to-date minimum standards.</li> <li>• Clear standards for officers and operators.</li> <li>• Avoids reliance on Health Act 1956 enforcement powers.</li> </ul>	<ul style="list-style-type: none"> <li>• Increased resourcing requirements to properly review Code.</li> </ul>	<ul style="list-style-type: none"> <li>• Operators disagree with minimum standards.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>• Ensure stakeholders consulted during drafting and special consultative procedure.</li> </ul>	<ul style="list-style-type: none"> <li>• Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>
<p><b>Clarification of any tā moko exemption</b></p> <p><b>Remove “non-commercial” reference from tā moko exemption.</b></p> <p><b>Include reasons for the exemption.</b> <b>(Recommended)</b></p>	<ul style="list-style-type: none"> <li>• Does not impact effectiveness as will not change the number of tā moko artists authorised by marae committees.</li> <li>• Does not affect implementation or enforcement of Bylaw.</li> </ul>	<ul style="list-style-type: none"> <li>• None identified.</li> </ul>	<ul style="list-style-type: none"> <li>• Artists could use marae authorisation to set up commercial premises beyond what the marae intended.</li> <li>• Officers will have to determine whether tā moko are working under authority of marae.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>• Marae authorise tā moko artists for a specific time period (e.g. one year).</li> <li>• Marae to give consideration to Code minimum standards.</li> <li>• Marae would confirm whether tā moko artist has been authorised.</li> </ul>	<ul style="list-style-type: none"> <li>• Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
<p><b>Amend bylaw to more clearly recognise the significance of traditional Pacific tattoo</b></p> <p><b>(Recommended)</b></p>	<ul style="list-style-type: none"> <li>Pacific tattoo artists more likely to comply with Bylaw and minimum standards if bylaw more clearly includes traditional practices.</li> <li>Potentially increase voluntary compliance because Pacific tattoo artists will be more aware of the need to comply with the Bylaw and Code.</li> <li>Reduces health risks for people in Pacific and wider community.</li> </ul>	<ul style="list-style-type: none"> <li>None identified.</li> </ul>	<ul style="list-style-type: none"> <li>Perception council is over-regulating traditional practices.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>Held workshop with Pacific community and key stakeholders are supportive.</li> <li>Consultation during process of drafting amendments.</li> </ul>	<ul style="list-style-type: none"> <li>Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>
<p><b>Amend bylaw to exempt traditional Pacific tattoo from licensing and minimum standards</b></p> <p><b>(Not recommended)</b></p>	<ul style="list-style-type: none"> <li>Exemption will not minimise significant health risks, including reported cases of serious infections.</li> <li>Traditional Pacific tattoo is a culturally significant practice and some stakeholders consider it should have equal status with tā moko which is exempt.</li> </ul>	<ul style="list-style-type: none"> <li>Participants may be vulnerable to unsafe practices by inexperienced Pacific tattoo artists.</li> <li>Officers would respond to complaints using Health Act 1956 but only after harm caused.</li> <li>No established authority to oversee traditional Pacific tattoo practice.</li> </ul>	<ul style="list-style-type: none"> <li>Perception that council is exempting high-risk services contrary to health expert advice.</li> <li>Risk that exemption could be interpreted more widely than intended and no overseeing authority to confirm legitimacy of practitioners.</li> </ul> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> <li>Ongoing engagement with community to establish authority to oversee Pacific tattoo artists.</li> </ul>	<ul style="list-style-type: none"> <li>Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</li> </ul>