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Introduction

The Australian Government has announced its commitment to implement a ban on the testing of cosmetics on animals. This commitment recognises the strong view of many Australians on this issue, and brings Australia into line with similar bans implemented in other countries. In fulfilling this commitment the Australian Government will continue to maintain Australia’s high standards in protecting public health, worker safety and the environment and ensure that any adverse impacts on business, trade and industry are taken into account and are minimised.

A public consultation process commenced in November 2016 with the release of the Background Paper. Initial consultations were conducted with stakeholders through a series of facilitated workshops and an online survey. Further consumer views were sought through independent market research. The feedback obtained from this process has provided a range of innovative ideas, insights, and concerns, and these have informed the development of policy options.

The purpose of this paper is to outline an option that would introduce a ban for Australia following the completion of the initial consultation process. The release of this paper aligns with the commencement of the second phase of the consultation process.

To help shape the implementation approach, stakeholders are invited to provide their feedback on the proposed policy framework and strategies outlined in this document.
Background and Context

**Cosmetic products**

Cosmetics products (and other personal care items) are chemical products that are designed to be repeatedly applied directly to the human body, or inside the mouth, to change its appearance, cleanse it, keep it in good condition, perfume it or protect it.

Cosmetic products include:

- Oral hygiene: mouthwash and toothpaste;
- Soaps and deodorants: antiperspirants, bath gels, body washes, antibacterial hand washes, shampoos and conditioners;
- Make up and beauty: nail polish, mascara, depilatory products, hair dyes and perfumes;
- Skin care: skin cleansing, acne washes, secondary sun protection products (with an SPF of 15 or below), lip care creams, anti-ageing creams, facial moisturisers, body lotions, hand/feet/skin emollients and shaving creams; and
- Some baby care and hygiene products.

Cosmetics products are used by consumers every day – estimates indicate each consumer uses at least seven different cosmetics per day and many of us use more\(^1\). The chemicals (ingredients) used in cosmetic products are often used in many other consumer and industrial products, such as in pharmaceuticals, detergents, food, paints etc.

**The Australian Cosmetic Industry**

In 2015-16 Australian cosmetic and toiletry retail market sales were valued at $3.7bn\(^2\). The majority of cosmetic products sold in Australia are imported by multinational companies, principally from the United States, France, Thailand and China.

The Australian cosmetic, perfume and toiletries manufacturers industry was worth $945 million in 2015-16\(^3\) and employed some 18,000 individuals\(^4\). This industry is globally focused, with exports making up over half the manufacturing revenue, accounting for $535 million in 2015-16\(^5\).

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\(^2\) IBIS World Industry report C1852 Cosmetics, Perfume and Toiletries, Manufacturing in Australia – June 2016

\(^3\) IBIS World Industry report C1852 Cosmetics, Perfume and Toiletries, Manufacturing in Australia – June 2016

\(^4\) IBIS World Industry report G4271B1852 Cosmetics and Toiletry Retailing in Australia – May 2016

Regulation of cosmetics

In Australia, cosmetics are regulated at the Commonwealth, and state and territory level. These regulatory frameworks establish requirements which ensure the safety and efficiency of cosmetics sold in Australia.

Cosmetic Products

Cosmetics are a consumer good and are subject to the broad provisions of the Australian Consumer Law (ACL) (Schedule 2 of the Competition and Consumer Act 2010) which is administered by the Australian Competition and Consumer Commission. The ACL provides a range of statutory guarantees to consumers when they purchase goods and services to ensure they are safe and of acceptable quality. Separately, a specific information standard makes it illegal to supply cosmetic products that do not provide ingredient information to consumers at the point of sale.

The Cosmetics Standard 2007 and the Standard for the Uniform Scheduling of Medicines and Poisons place further restrictions on ingredients used in cosmetic products and set requirements for specified products to distinguish them from similar goods that are for therapeutic use.

Chemical ingredients used in cosmetics

The ‘introduction’ (import and/or manufacture) of cosmetic ingredients is subject to regulation under the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), which is established by the Industrial Chemicals (Notification and Assessment) Act 1989.

Industrial chemicals are defined by exclusion (chemicals that are not therapeutic goods, agricultural or veterinary chemicals, food or food additives) and hence include cosmetic ingredients. There is no standalone legislation for cosmetics, and chemical ingredients used in cosmetics are often used in a broad range of other consumer and industrial products.

Chemical ingredients proposed for use in cosmetic products are required to be notified and (unless exempt from assessment) assessed for human health and environmental impacts. The extent of scientific information required for assessment depends on the category under which a chemical is notified.

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Animal testing of cosmetic ingredients and products

Testing of cosmetic ingredients and products is conducted to assist in developing a new product and to check the safety of new ingredients. Testing is used to determine whether the ingredient does what it is designed to do, and if there any side-effects. Safety testing may also be carried out in order to meet regulations required to sell new products or formulations in order to protect human and animal health and the environment.

For the investigation of possible human health effects, animal tests have historically been considered to be the most reliable, as they best represent the overall effect of a chemical on a living human. However, as technology has advanced, animal tests are expensive, time consuming to conduct and are questioned on both ethical and scientific grounds.

In recognition of the ethical concerns raised by animal testing (in cases where non-animal tests aren’t available), the ‘Three Rs’ (replacement, reduction and refinement principles) are applied to testing regimes by international and domestic standard setting bodies.

Internationally, significant work has been undertaken to develop alternatives to animal testing. For example, the Organisation for Economic Cooperation and Development (OECD) offers guidelines on methods which avoid or replace the use of animals, minimise the number of animals used in a test, and set out methods which minimise suffering and improve animal welfare. However, non-animal tests are not yet available to assess all health effects, such as repeated exposure to a substance. This may be because alternatives have not yet been developed, or because they are still in the process of evaluation and validation.

The initial consultation process conducted by the Department of Health involved State and Territory governments in their roles as regulating the use of animals in research. Through this process jurisdictions advised that no applications were received to test cosmetics and/or their ingredients from 2013 to 2015. Both industry and animal welfare advocacy groups have similarly advised that animal testing for cosmetic purposes is no longer occurring in Australia. Similar to Australia, there is an international movement towards decreasing the use of animals in cosmetic testing.
**International bans**

Internationally, many countries have introduced bans to regulate cosmetic testing on animals, tailored to reflect jurisdictional and local laws and regulations.

As illustrated in Figure 1 below, a number of countries have followed the EU in introducing a ban on animal testing of cosmetics.

![Map showing countries with cosmetic testing bans](image)

**Figure 1: Bans (proposed and implemented) internationally**

Between 2004 and 2013, the EU implemented a ban prohibiting the use of animal testing on cosmetic products and cosmetic ingredients. This ban includes an exception to allow animal testing should an alternative non-animal test be unavailable, for example, in order to protect public health, the environment, and/or worker safety.

This ban also prohibits the use of animal test data to meet the requirements of the cosmetics regulations. This ban however acknowledges that the majority of ingredients that go into cosmetics are ingredients that are also in use in many other consumer and industrial products, such as in pharmaceuticals, detergents, food, paints etc. Those ingredients are subject to animal testing requirements under the respective legal frameworks and this testing is not prohibited by the EU ban.
Fundamental to these arrangements is that when they came into effect they were prospective in application, that is, that products which already existed in the market were unaffected. In addition, the ban focused on new animal testing with data obtained from animal testing undertaken prior to the implementation date still able to be used to support the introduction of a new cosmetic ingredient.

In 2016, New Zealand introduced a ban on animal testing. This ban prohibits the use of an animal in any research, testing or teaching that is for the purpose of developing, making or testing a cosmetic or ingredient. The ban on ingredients however is limited to those ingredients that are intended exclusively for use in a cosmetic.

Contrary to these approaches, some countries continue to specifically require animal testing of cosmetic products prior to sale. Local and international companies continue to sell their cosmetic products in China, where it is understood that animal testing is required for imported cosmetics products. Through the consultation process to date it is understood that the EU ban does not prevent companies from undertaking this testing however data arising from this testing cannot be used to support the introduction of the cosmetic into the EU.

The consultation process further highlighted that a number of local and international companies have chosen not to sell their products in those countries where animal testing is mandated to maintain their cruelty-free status or to market their products as cruelty-free.
Findings from Consultations

To better understand and consider the viewpoints of all stakeholders, consultations were conducted to inform the development of the proposed policy framework to introduce a ban for Australia.

Commencing in November 2016, industry, animal welfare organisations and the general community were invited to provide their views on how the Government should approach a ban. Through face-to-face workshops and teleconferences, more than 50 individuals and/or organisations expressed an interest in providing detailed views on the proposed ban.

To supplement this research, Hall and Partners (Open Mind) undertook external consumer market research. This research explored the views of Australians (across a breadth of demographic categories) through 18 focus group discussions, as well as an online survey of a representative sample of some 2,000 members of the general public. The demographics associated with this group are at Appendix A.

Feedback was also obtained from interested parties via an open online survey. The online link was open for responses from 18 November to 16 December 2016 and around 25,000 individuals from the general public participated.

The key themes communicated by stakeholders are depicted in Figure 2.

Figure 2: Key themes communicated by stakeholders
Both respondents to the open online survey and consumers felt that the introduction of a ban would bring Australia into alignment with comparable overseas countries. Similarly, industry views indicate support for a ban aligned with international approaches, however a transition period is required to ensure the impacts of the ban are understood. Animal welfare advocates have indicated strong support for the ban, stating that cosmetic testing on animals is unnecessary and noting that this commitment positions Australia as a progressive nation.

The consultation suggests that while animal testing is a high profile issue for those responding to the online survey, general consumers participating in the consumer market research were less engaged. Animal testing practices and the potential effect of a ban on animal testing of cosmetics were not high profile issues for these consumers. Figure 3 indicates that around 35% of consumers did not know whether the ingredients or products currently available in Australia were tested on animals. Few consumers were aware that animal testing of cosmetic ingredients or products does not occur in Australia.

Consumers considered there was a need for greater transparency and clarity around information that manufacturers provide on their products. They are unaware of where to find information regarding animal testing of cosmetics in Australia, and find claims that companies are allowed to make on their products potentially confusing. Some consumers are assuming that products are not being tested on animals on the basis of terms such as ‘low/no toxins’, ‘sustainably produced’, ‘ethical’, ‘locally made’, ‘home/handmade’ and ‘Australian made’.

Even when a clear claim is present on a package, only 46% of consumers feel confident that the product is definitely not tested on animals. 49% of consumers argue that products should have prominent labelling to ensure consumers are not misled around compliance with an animal testing ban.
All stakeholders commented that the design of an Australian ban should take into consideration, and align as much as possible with, approaches in a number of countries that currently have animal testing bans in place. Some 68% of respondents to the open online survey, and 49% of consumers, (as indicated in Figure 4) felt that the introduction of a ban would bring Australia into alignment with comparable overseas countries. It was noted during consultations that the introduction of a ban could potentially promote innovation with both products and testing methods. Consumers argue that a major increase in costs or significant reduction in the consumer choice could drive individuals to purchase their cosmetic products from overseas countries which may or may not have bans in place.

In certain circumstances, consumers considered that animal testing undertaken to determine the safety of a product or ingredient (for consumers, the environment and individuals working with the product) is necessary. Figure 5 shows some 49% of consumers indicated either an acceptance or neutral response to the question of animal testing in certain circumstances. For example, if the product is intended for use by a vulnerable group such as babies, or to protect the wellbeing of people or the environment.

When considering the impact of a ban, Figure 6 shows approximately 34% of consumers indicated that a ban would not have a detrimental effect on Australian jobs and businesses. Consumers expressed that they do not want to disadvantage Australian businesses importing cosmetics or exporting Australian products to overseas markets. Consumers have an expectation that government ensure that broader economic impacts are minimised when implementing the ban.
Survey participants were then asked to consider how industry would demonstrate compliance with a ban. Just over half of the consumers indicated that independent audits, monitoring or reviews were preferred compliance mechanism. Some 58% of survey participants support industry-supplied compliance data as part of the mechanisms put in place to ensure compliance.

Consultations indicate that consumers are likely to be more supportive of a prospective ban due to concerns as to how a retrospective approach could be implemented and enforced. Further, consumers question the point of applying the ban to existing products or ingredients, as the testing has already been undertaken and banning these products now will not lead to a reduction in animals harmed. Equally, a retrospective ban could potentially lead to large number of products disappearing from the shelves.

Industry stakeholders highlighted the potential significant challenges required to introduce and ensure compliance with an Australia ban. On this basis, industry contends that a longer period of transition than announced is required. Consumers noted that the introduction of a ban was complex and appreciate the scale of adjustment required from industry. Because of this, consumers expected that the ban will be phased in gradually to provide organisations time to comply and innovate, and to allow consumers time to adjust. Consumers typically estimate the phase-in period for a ban will be between 1-5 years.
Proposed Policy Framework

The proposed policy framework outlines an option that would introduce a ban for Australia which seeks to address animal welfare concerns while ensuring there are no unintended consequences for Australian consumers and the cosmetic industry. The following policy principles are the foundation for the proposed approach:

The Australian Government proposes to introduce a Ban on the Testing of Cosmetics on animals, which will seek to:

✓ Maintain Australia’s strong public health protection standards.
✓ Ensure the ethical use of animals used for test purposes.
✓ Provide a practical, cost-effective and proportional regulatory response to the problem.
✓ Be consistent with the Government’s agreed reforms to regulation of industrial chemicals.
✓ Apply to data and testing where the sole purpose is to meet regulatory obligations for new cosmetic ingredients and products.
✓ Avoid negative consequences or spill over effects for other industry sectors.
✓ Harmonise Australian regulatory practices with our major trade partners.
✓ Support innovation in the cosmetic sector by allowing chemical substances tested prior to the start date of the ban to be used in future cosmetic products.

Consistent with the EU approach, the proposed approach would allow for exceptions for animal testing for public health and safety, worker health and safety, and the environment, where no non-animal test method is available and the risk cannot otherwise be adequately assessed. Data obtained from animal testing undertaken before implementation of the ban would also be exempt. This approach would provide a certainty for the future ensuring cosmetic testing on animals does not occur.

To ensure compliance, the Government would work with industry to develop and implement a voluntary code of conduct. This would ensure industry and consumers are aware of the new obligations and provide increased consumer confidence that purchased products were not tested on animals in Australia.
The proposed approach would be phased in gradually to allow consumers time to adjust and industry time to comply. Industry and consumers would be kept informed by an extensive educational program providing information in relation to the changes and impacts following implementation.

### Objectives:

The Government would introduce the ban through the following objectives which combine both regulatory and non-regulatory approaches, and recognise the regulatory system already in place for chemicals:

1. Establish the ban within Australia’s current regulatory arrangements for industrial chemicals.
2. Strengthen existing frameworks concerning the ethical use of animals in research.
3. Provide a means for industry to demonstrate commitment to the ban, with an adequate period of transition to move to new arrangements.
4. Provide mechanisms for consumers to understand whether the products they are purchasing adhere to the new Australian ban.

### Strategies:

In order to achieve the Government’s policy objectives, it is proposed that:

- The new industrial chemicals legislation include provisions to ban the use of new animal test data to support the introduction of chemicals used exclusively as cosmetic ingredients.
- The National Health and Medical Research Council’s (NHMRC) *Australian Code for the care and use of animals for scientific purposes* (the Animal Ethics Code) be amended to ban cosmetic testing on animals.
- The NHMRC work with states and territories to ban cosmetic testing on animals by adopting the amended Animal Ethics Code into state and territory laws.
- The Government work with the cosmetics industry to develop a voluntary code of conduct for industry on animal testing of cosmetic products.
- An information and communications approach will be developed to provide clarity for consumers and industry around promotional claims that can or cannot be made on cosmetic products.

### Table 1: Proposed framework for the implementation of a ban on the testing of cosmetics on animals
Exceptions

It is suggested that the design of the ban would allow for exceptions that exist in similar bans internationally including:

- the use of data from animal testing undertaken before the implementation of the ban;
- cosmetic products and ingredients which are already on sale in Australia before the implementation of the ban, as any animal testing has already been undertaken;
- chemical substances used for a different purpose (e.g. a therapeutic or pesticide);
- repurposing a chemical substance (and any associated animal test data) used initially for a different purpose, for subsequent use in a cosmetic product; and
- animal testing for a different purpose e.g. biomedical research, drug development, or occupational health and safety and environmental protection.

How can I be involved?

As outlined previously, this paper forms the second stage of a phased consultation process to help shape the Government’s approach in implementing its commitment to ban the testing of cosmetics on animals. Stakeholder feedback is sought on the proposed policy approach set out in this paper. Information on how to contribute feedback can be found on Department of Health website: http://www.health.gov.au/internet/main/publishing.nsf/Content/ban-cosmetic-testing-animals
Appendix A: Demographics of representative sample for market research online survey

**Age**
- 50 yrs or over: 24%
- 40-49 yrs: 19%
- 30-39 yrs: 19%
- 20-29 yrs: 21%
- 16-19 yrs: 17%

**Gender**
- 49% males
- 50% females

**Location**
- 65% were from metro areas

**Household composition**
- Live alone: 20%
- Couple living with no children at home: 30%
- Couple children at home: 30%
- Single parent with children at home: 7%
- Group of unrelated adults living together: 3%
- Group of related adults (e.g., siblings) living together: 7%
- I would prefer not to say: 2%

**Household income**
- Less than $45,000: 28%
- $45,000 - $59,999: 12%
- $60,000 - $69,999: 22%
- $100,000 - $129,999: 10%
- $150,000 - $199,999: 7%
- $200,000 or more: 8%
- I would prefer not to say: 13%

**Background**
- 2% were from Aboriginal and/or Torres Strait Islander background
- 15% were from a culturally and linguistically diverse background