



## Animal Defenders Office ACT

*Using the law to protect animals*

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### SUBMISSION TO THE AUSTRALIAN LABOR PARTY: COSMETICS AND ANIMAL TESTING POLICY CONSULTATION

#### About Us

The Animal Defenders Office (ADO) is an incorporated, non-profit community legal centre that specialises in animal law. Our mission is to use the law to protect animals, which includes:

- assisting individuals and groups to secure animal interests through existing legal mechanisms;
- increasing public awareness of animal protection matters; and
- working to advance animal interests through law reform.

The ADO has been in operation since December 2013, and has a mandate to consider both local and national animal protection issues. Further information about the ADO can be found at [www.ado.org.au](http://www.ado.org.au).

#### About this submission

This submission is made in response to an invitation from the Australian Labor Party to make a submission in relation to phasing out the importation, manufacture, sale and advertising of cosmetics or cosmetic ingredients tested on animals.

The ADO welcomes moves by the Labor Party to consider a ban on animal testing in this area, and we appreciate the opportunity to participate in the consultation process.

#### **1. Should the sale and manufacture of cosmetics tested on animals be banned in Australia? Why or why not?**

The sale and manufacture of cosmetics tested on sentient animals should be banned in Australia and furthermore a ban of animal testing itself should be officially introduced. Animal testing methods were created in the first half of the 20<sup>th</sup> century and continuing to adhere to these out-dated procedures poses not only a risk to human safety and scientific progress but also to Australia's reputation on an international level. Animal testing methods contain inherent weaknesses including differences in absorption, digestion and excretion and furthermore are an inaccurate model due to differences in lifespan and consequent exposure that humans would experience. The European Union Commission termed the development of new cosmetics without testing on animals 'responsible innovation,' and banning animal testing (including the sale and manufacture of cosmetics tested on animals) in no way acts as a barrier to scientific progress. Continuing to test on animals itself is detrimental to the discovery of new technologies that support the beliefs and values of consumers.

Ultimately, the most accurate measurement is testing on humans, and computational modelling and other technologies allow for safety to be predicted before this final stage. Examples of alternatives to animal testing include human DNA chips, computer models of human organs and finally human volunteers. QSAR computer analysis is able to predict the likely irritancy of subjects and these tests are often cheaper than testing on animals. An example of an alternative is Eyetex™. This product consists of a clear protein gel which

becomes cloudy when it comes in contact with an irritating substance, acting in the same way as the cornea of the eye. The alternative to this is dropping chemicals into rabbit eyes and assessing the degree of swollenness and redness. Technologies such as Eyetex™ allow not only for greater accuracy, but also eliminate the need to cause pain and suffering in a sentient creature for a 'cosmetic' (non-therapeutic) purpose. Introducing a ban in Australia would result in benefits to industry, government and the community. Industries have thousands of ingredients available to them that have already had their safety assured so there is no necessity to develop new ingredients.

On a global level, there is increasing acceptance that there are more efficient and accurate technologies to assess the concentration and toxicity profile of a product's constituents. Other jurisdictions around the world such as the UK, European Union, Norway, Israel and India are already implementing such bans and producing safe and innovative new products. In addition to a reputational risk involved in resisting a ban, there are also potential implications associated with Australia's ability to trade with these markets which constitute a large proportion of the cosmetic market. Although there is currently no testing of cosmetics or cosmetic ingredients on animals in Australia, many companies continue to do so overseas. Without a ban on the sale and manufacture of these products/ingredients, Australia is still supporting this unnecessary and often scientifically flawed practice.

## **2. Most efficient and effective way of banning these practices?**

The most efficient and effective way to ban these practices is to follow the example of jurisdictions (particularly the EU) that have already been successful in doing so. In 2013, a ban on the import or sale of cosmetics newly tested on animals was introduced in the EU, which prevented EU companies from testing their ingredients or products overseas. This resulted in the EU selling cosmetic products that contained ingredients well established to be safe for humans and ending the need to test new ingredients on animals. This change occurred due to political pressure and regardless of the lack of alternative methods for testing being available, indicating that the large number of ingredients already tested were sufficient to support the whole industry. The consequence of this was that companies merely had to develop new cosmetics from existing ingredients and that pressure was created to develop alternative ways of testing.

In implementing these bans, Australia should pay attention to the five key elements which constitute the EU ban. These are as follows:

1. The prohibition of animal testing of finished cosmetic products;
2. Prohibition of animal testing of cosmetic ingredients;
3. Prohibition of marketing of cosmetic ingredients and products tested on animals;
4. The ability to continue to use data that had been carried out before the implementation of the ban (indicated by a clearly defined cut-off date); and
5. Implementation of bans whether or not there are alternatives to the animal tests.

Furthermore, there is the necessity to develop legal definitions of terms such as 'cruelty free' so that consumers can be confident that a product with such a label was not tested on animals and does not contain ingredients tested on animals.

Compliance with the cut-off date would also need to be monitored. Cosmetics are currently treated as an industrial chemical in Australia.<sup>1</sup> This means that the relevant regulatory body is NICNAS (part of the Department of Health), and that there is a requirement to test some cosmetic chemicals on animals overseas. The classification as an industrial chemical should therefore be changed. A national ban on testing cosmetics on animals should also include a requirement that cosmetic companies demonstrate that any animal testing of ingredients they use was done before the cut-off date.

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<sup>1</sup> *Industrial Chemicals (Notification and Assessment) Act 1989.*

### **3. What changes would need to be made by industry and government to comply with these bans?**

NICNAS already states that it is paying close attention to the alternative test methods being developed as a result of the implementation of the EU ban.<sup>2</sup> The organisation has also indicated that it would be willing to implement such methods when they become available.

The government would also need to prevent the notification of new cosmetic ingredients until they have been assessed to be safe without animal testing after the cut-off date.

### **4. How would such bans be policed**

The policing of these bans should not provide a significant hurdle for Australia due to the fact that the EU has already encountered many of the issues associated in developing and implementing a ban. Furthermore, NICNACS already plays a role in ensuring compliance and enforcement, meaning that its role could easily be extended to enforcing the bans on the sale and manufacture of animal tested cosmetic products.

### **5. Are there any additional implications that we should be aware of?**

#### **For industry?**

The hurdles put up by industry are not significant because they would not be severely disadvantaged, for example in practice less than 5% of cosmetic products contain new ingredients and many of these do not require testing due to their similar chemical properties to existing ingredients. Prevention from testing new ingredients would not have negative implications because there are already thousands of safety assured ingredients due to the presence and development of new technologies already occurring in the EU. Furthermore, if NICNACS did not require some products to be tested on animals, this could lead to reduced costs for Australian cosmetic companies, and products would not have to be sourced overseas.

The cosmetics industry already seems willing to embrace the bans. For example the umbrella industry body Accord has already stated that due to global opinion, Australia is likely to follow in the steps of Europe, Britain, India, Israel, Norway and others.

It is also likely that a ban would increase trade options and decrease the regulatory compliance burden associated with trading with countries that have already implemented such bans.

#### **a. For government?**

The government must first alter the regulatory framework in place in Australia to allow the bans to be effective and enforceable. The existing commonwealth legislation needs to be amended to allow for industries to keep up with this global movement, and to better reflect consumer beliefs and values. In order to be workable and enforceable, it is also important that changes are implemented following consultation with industry. Introducing these bans is likely to have a positive effect on international trade and reputation.

#### **b. For the community?**

Consumers are demanding animal welfare standards. If regulations preventing industry from complying with these standards are removed, then consumers will be able to have greater control over what they are supporting through their purchasing choices. An Australian survey revealed that 81% of the population support a ban on the sale of cosmetics that have been

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<sup>2</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/MC14-002985-choose-cruelty-free>

tested on animals.<sup>3</sup> Implementing a ban means that Australian laws will conform more closely to consumer beliefs and values.

#### **6. What would be a realistic timeframe for compliance?**

In the EU, where there were accepted alternative methods available, animal testing was banned the year after the relevant legislation was amended. Five years later, animal testing for developing new cosmetic ingredients and the sale of newly tested cosmetics were also banned. India implemented a ban within one year of their consultation process and the full import and sales ban is expected to take two years. In Australia, an immediate testing ban should be implemented followed by a sale and marketing ban. Considering that many countries have already been through this process, Australia has the advantage of being able to draw on previous experience, which can significantly shorten the timeframe for compliance.

#### **7. Is there anything else you would like the subcommittee to take into consideration when thinking through this issue?**

Animal testing is no longer an accurate and reliable mechanism for the safety assessment of chemicals used in cosmetic products due to the increasing number of available and better alternatives. If Australia were to stick to this out-dated model, it is inevitable that the international trade and reputation of our country would suffer. Considering the global movement towards non-animal testing already taking place, Australia should take full advantage of the information and technologies already in place for implementing bans on testing cosmetic products and ingredients on animals and the sale and manufacture of such products and ingredients.

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<sup>3</sup> <http://www.humaneresearch.org.au/interview/australians-say-no-to-animal-experiments>