



AUSTRALIAN LABOR
COSMETICS & ANIMAL TESTING
POLICY CONSULTATION

**NATIONAL CONSULTATION
ON COSMETICS AND ANIMAL
TESTING**

REPORT ON THE PUBLIC CONSULTATION PROCESS

Clare O'Neil MP

17 September 2014

EXECUTIVE SUMMARY

The Australian Labor Party held a national consultation on cosmetics and animal testing between 10 July and 29 August 2014. The consultation had three parts:

- Public submissions: 13,680 submissions were received.
- Public forums: Public forums were held in six capital cities across Australia with between 30 and 90 people attending each forum.
- Stakeholder submissions: Animal welfare groups, legal experts and industry bodies made written submissions and also attended in-person meetings with MPs.

In garnering the views of so many Australians, we heard thousands of different opinions. They cannot possibly be captured in detail here. Instead, this report elaborates on the **ten themes** that came up consistently during the consultation:

1. There is broad support for a ban on animal testing
2. Animal testing is seen as unnecessary
3. There are several policy complexities that must be considered
4. A retrospective ban is not desired
5. There are differing views on exceptions, timeframes and legislative options
6. There are several enforcement options
7. There are precedents for change in other countries
8. A ban presents opportunities for industry and researchers
9. Several related issues may require further consideration
10. There is a strong call for action

Labor will use the perspectives shared throughout the public consultation to inform development of policy options. These options will be discussed with the Labor Caucus over the coming months.

Thank you for your contributions to date and please stay tuned to the website for future updates: <http://www.alp.org.au/cosmeticstesting>

VIEWS FROM THE PUBLIC CONSULTATION

“I am so thrilled to see this proposal... cosmetic testing is cruel, outdated and in this day and age - unnecessary”

Public submission

“We will only make progress through public education and hearing consumer’s views”

Meg Good, Barristers Animal Welfare Panel, Guest Speaker at the Hobart Public Forum

“At the end of the day, no one likes the idea of animal testing. Complete replacement or removal of animal test requirements for most types of cosmetics is a goal for our industry”

Accord Australasia

THE CONSULTATION

On 29 August 2013, the (then) Minister for Health and Minister for Medical Research, the Hon Tanya Plibersek MP, announced that Labor will lead a national consultation on phasing out the import, manufacture, sale and advertising of cosmetics or cosmetic ingredients tested on animals. This commitment was reaffirmed on 10 July 2014 when Labor announced the commencement of the public consultation. Clare O'Neil MP, Member for Hotham, was asked to lead the process.

There were three aspects to the national consultation:

- Public submissions: 13,680 submissions were received.¹
- Public forums: Public forums were held in six capital cities across Australia with between 30 and 90 people attending each forum.²
- Stakeholder submissions: Requests for submissions were sent to approximately 50 stakeholders in July 2014, including animal welfare, animal rights and industry groups. In addition to receiving written submissions from some of these stakeholders, approximately 15 in-person meetings were conducted.

The public consultation was motivated by Labor's desire to get our policy on animal testing right. There is broad agreement, in principle, that animal testing for cosmetic products is not desired by the Australian community. This was the overwhelming view of the people with whom we consulted.

However, putting community values into law isn't always straightforward. The regulation of cosmetics and other chemical substances is a complex and highly technical area of public policy.

That's why Labor has consulted with the community, stakeholders and industry. Doing so will help us create a workable policy that meets community expectation, using the significant expertise of affected organisations and individuals.

Through the many thousands of people with whom we had contact during the consultation process, we heard thousands of different views and perspectives. They have all been read and considered. All will be taken into account in Labor's policy development. This report details ten consistent themes we heard throughout the consultation process.

1. Submissions closed on August 29 2014 - <http://www.alp.org.au/cosmeticstesting>

2. Forums were conducted between August 15 and 21 2014

COSMETICS REGULATION IN AUSTRALIA

Cosmetic ingredients are federally regulated and broadly defined

The *Industrial Chemicals Notification and Assessment (ICNA) Act 1989* provides national standards for cosmetics imported into, or manufactured in, Australia. Under the direction of this Act, the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) regulates all industrial chemicals imported or manufactured in Australia, including those used in cosmetics.

Under the ICNA Act, cosmetics are defined as substances or preparations intended for placement in contact with any external part of the human body (including the mucous membranes of the oral cavity and the teeth) with a view to (i) altering the odours of the body; (ii) changing its appearance; (iii) cleansing it; (iv) protecting it; (v) perfuming it; or (vi) maintaining it in good condition.³ In light of this definition, cosmetics includes:

- Oral hygiene: Mouthwash and toothpaste⁴
- Soaps and deodorants: Antiperspirants, bath gels, body washes, antibacterial hand washes, shampoos and conditioners
- Skin care: Skin cleansing, acne washes, secondary sun protection products (with an SPF of less than 15), lip care creams, anti-ageing creams, after sun skin care treatments, facial moisturisers, body lotions, hand / feet / skin emollients and shaving creams
- Make up and beauty: Nail polish, mascara, make-up, depilatory products, hair dyes and perfumes
- Some baby care and hygiene products

In addition to cosmetics regulation, product labelling and animal welfare regulations are relevant to a potential ban on cosmetics tested on animals. Product labelling is regulated by the Australian Competition and Consumer Commission whilst animal welfare is covered by state legislation, underpinned by a national code of practice, the *Australian code for the care and use of animals for scientific purposes*. Whilst relevant, changes to these regulations are not necessarily required to introduce a ban on cosmetics tested on animals.

³ <http://www.nicnas.gov.au/chemical-information/cosmetics/definition-of-a-cosmetic>

⁴ With the exception of some toothpastes which may contain greater than prescribed amounts of fluoride and/or make therapeutic claims and/or have a 'therapeutic effect' such as teeth de-sensitising

1. BROAD SUPPORT FOR A BAN

The vast majority of the 13,680 public submissions received expressed support for a ban on animal testing, with a very broad range of Australians expressing this view

92 per cent of on-line submissions support a ban of cosmetics tested on animals. Whilst animal testing does not take place in Australia (although the practice remains legal), there is broad discontent that companies in Australia use animal testing conducted overseas to prove new ingredients are safe. For instance:

- Over 5,000 written submissions raised concerns about animal cruelty or suffering.
- Animal testing is seen as particularly unnecessary and unethical given that other jurisdictions such as the European Union (EU) have instituted a ban; approximately 20 per cent of written submissions pointed to bans introduced elsewhere.
- The public support for a ban appears to be very widespread. The participants at our public forums were incredibly diverse – whether schoolgirls, older Australians, animal activists, scientists, cosmetic manufacturers, or cosmetics consumers, the vast majority of people we spoke with support a ban. Many who attended public forums told us this was the first time they had ever participated in any type of political event. This highlighted that a ban on cosmetics tested on animals appears to be supported by a very broad range of Australians.

The findings of our consultation are broadly consistent with previous research. A survey conducted by Nexus Research in May 2013 found that 81 per cent of Australians and 85 per cent of Australian women agree that Australia should follow the EU and ban the sale of cosmetics tested on animals.⁵ Likewise, a recent survey by Roy Morgan found that, for women who buy cosmetics, “not tested on animals” was the third most important product feature,⁶ nominated by 43 per cent of women. Furthermore, “not tested on animals” is one of only three product features that has increased in importance over the last two years.⁷

5. Public Opinion Poll on Humane Research Issues –

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

6. <http://www.roymorgan.com/findings/5698-is-animal-testing-for-cosmetics-on-way-out-201407240022>

7. The others being ‘Quality brand’ and ‘Moisturising benefits’, which both rose by less than 0.5 per cent

2. ANIMAL TESTING IS SEEN AS UNNECESSARY

There were a number of reasons put forward outlining why animal testing is not required

Tests used to ascertain the safety of cosmetic ingredients often subject animals to pain and distress without pain relief. Toxicity testing exposes animals to chemicals through oral force-feeding as well as exposure via skin, eyes and inhalation. Data from these tests are currently required by NICNAS (the Australian regulator for cosmetic ingredient registration) for ingredients that are new to Australia.⁸

Submissions cited the large number of ingredients already available for use in cosmetics. Contributions pointed to companies who already produce innovative cosmetics without conducting animal testing. For instance, the *Be Cruelty-Free Australia*⁹ submission stated:

“Hundreds of companies—including LUSH, Natures Organics, Natio, MooGoo, Australis, and many others such as those listed on the Choose Cruelty Free list—have sworn off animal testing, yet still produce new, safe and fabulous beauty products”

In the event that new ingredients are required, a number of groups and concerned citizens suggested that there is no need to rely on animal testing to prove safety. Several stakeholders from the science community suggested that non-animal tests are increasingly reliable, such as using data from a tested chemical to make an inference for a similar untested chemical (“read-across”), in vitro cell culture, computer based simulation and human volunteers. The following comment from a public submission reflects a common message:

“Not only are animal experiments dangerous and immoral, they do not represent good science. There are better, faster and cheaper alternatives to animal testing which should be explored further and adopted”

8. See Appendix F, Schedule C of the NICNAS Handbook - <http://goo.gl/xsG6UX>
Note though that requirements can be varied by NICNAS under some circumstances.

9. The *Be Cruelty-Free Australia* campaign is led by Humane Society International and Humane Research Australia

VIEWS ON ALTERNATIVES TO ANIMAL TESTS

“Industry and government will need to trial, embrace and foster new scientific (testing) technologies”

Public submission

“Many animal tests are decades old and have inherent scientific weaknesses due to species-differences and other factors that increase regulatory uncertainty”

Be Cruelty-Free Australia

“Nearly 50 different alternative methods and testing strategies have been developed, validated and/or accepted by international regulatory authorities”

Public submission

From a regulatory perspective, we were told that testing conducted for the European and United States markets could be better employed by the Australian regulator.

Accord Australasia suggested that using approvals conducted in major overseas markets would minimise the demand for new testing, given that the existing chemical inventories of the EU (EINECS) and the USA (TSCA) are at least twice the size of the Australian inventory (AICS).

However, others noted very substantial challenges associated with relying on assessments conducted in other jurisdictions. There are significant differences between jurisdictions, including environmental conditions, the way ingredients are used, and the quantity and quality of chemicals in different products. As a result, relying on assessments conducted in other jurisdictions has the potential to weaken public health and environment protections.

Finally, where a new ingredient is similar to existing chemistries, it was argued that there may be increased opportunities to rely on read-across techniques. The *Be Cruelty Free Australia* submission explained that:

“... most ‘new’ ingredients are similar enough to existing chemistries that companies are able to assess their safety through accepted non-testing approaches such as chemical read-across, without any new animal testing”

3. POLICY COMPLEXITIES

Several complexities were raised that need to be considered

In principle, the cosmetics industry is against cosmetic testing on animals. Despite this in principle support, industry explained that the need to provide animal testing data is a requirement currently imposed on them by the NICNAS. The NICNAS website states that:

“For most human health toxicology endpoints, animal tests are considered to be the most reliable form of evidence because they observe the overall effects of a chemical on a living subject”¹⁰

As such, although NICNAS do permit non-animal tests for some toxicological end-points, any change in legislation would need to consider changes to the relevant NICNAS requirements to prevent contradiction. Both industry and animal groups also raised concerns regarding differences between NICNAS testing requirements and corresponding requirements in other jurisdictions.

Any ban would need to consider that some cosmetic ingredients are also used for other purposes that may require animal testing. Areas of overlap include medicines, food, cleaning products and clothing. As

10. <http://www.nicnas.gov.au/communications/issues/animal-testing-and-cosmetics/data-requirements-and-animal-testing-for-new-cosmetic-ingredients>

such, any new policy would need to articulate (i) whether testing carried out for other purposes could be used to support risk assessments for cosmetics; and (ii) whether substances tested on animals for non-cosmetic purposes can still be used in cosmetic products.

4. RETROSPECTIVE BAN IS NOT DESIRED

There is very little appetite for a ban on animal testing to be retrospective

There is almost complete consensus that products or ingredients tested on animals prior to a defined cut-off date can continue to be imported, manufactured, marketed and sold in Australia. A participant at the Hobart public forum who is supportive of a ban on animal testing remarked:

“If we ban products that have already been tested on animals, those animals will have suffered and died for nothing”

In addition to these ethical concerns, industry explained that thousands of ingredients used in formulated products, including cosmetics, will most likely have been tested on animals at some time in the past. As such, any retrospective ban is likely to be highly disruptive to both industry and consumers. A ban on products tested on animals in the past would also be a departure from the approach adopted by other countries who have introduced a ban, such as the EU.

5. DIFFERING VIEWS ON EXCEPTIONS, TIMEFRAMES AND LEGISLATIVE OPTIONS

There were mixed views on the need for additional exceptions

Some with whom we consulted argued there may need to be exceptions to a ‘no animal testing’ rule for (i) cosmetics tested on animals prior to a defined cut-off date; and (ii) ingredients that were tested for non-cosmetic purposes (e.g. medicines) that are also used in cosmetics. Other suggested exceptions included:

- Treating **fish** differently, as they are used to determine environmental risks, thus benefiting both marine populations and humans alike.
- Exempting **high-risk cosmetics**, such as hair-dyes, toothpastes, mouthwash and baby care products.
- The European Commission allow Member States to request a derogation for **existing ingredients with serious safety concerns** that are in wide circulation and cannot be replaced.

Noting the potential for some exceptions, there were concerns raised that exceptions could jeopardise the effectiveness of the ban. This was reflected by the following comment in a public submission:

“...exceptions for manufacturers and retailers will only create grey-areas that hamper the monitoring and policing of regulations. Given the magnitude and the gravity of the consequences, nothing short of a total ban will provide an acceptable and enforceable outcome”

There is a diversity of views regarding a timeframe for compliance

Animal rights and animal welfare groups are seeking an introduction of a ban on the sale, import and manufacture of cosmetics tested on animals as soon as possible. Suggested timeframes range from the date that any change in legislation takes place to a one year phase-in. Several public submissions also suggested the provision of incentives for early compliance.

In contrast, industry would like a longer phase-in period to allow the regulator time to adjust, and provide companies time to complete existing research and development. *Accord Australasia* suggest that between two to three years will be required whilst the *Australian Society of Cosmetic Chemists* believe industry will require a minimum of five years.

Given that there is currently no animal testing conducted in Australia, there are fewer disputes regarding the possibility of a short phase-in or even an immediate ban on domestic testing.

There are several legislative options available. However, amendments to the ICNA Act are preferred by most stakeholders

In-person meetings highlighted that most stakeholders believe Labor should use the ICNA Act to introduce a ban on animal testing. In addition to a ban on domestic testing, there was broad agreement that any ban should apply to import, sale, marketing and manufacturing of cosmetics, or cosmetic ingredients, tested on animals. Many submissions encouraged Labor to use the EU legislation as a template and, relatedly, the wording included in the UK's *Cosmetic Products (Safety) Regulations 2008*. For instance, the RSPCA state:

VIEWS ON TIMEFRAME FOR COMPLIANCE

“I think it should be phased out within a year. This allows retailers time to order cruelty free products from many other cosmetic lines that do not support animal testing”

Public submission

“A six-month transition is totally insufficient as it takes 12-24 months for even a simple cosmetic product to be properly developed”

Australian Society of
Cosmetic Chemists

“A long implementation period could seriously diminish determination to swiftly develop alternative test methods”

Barristers Animal
Welfare Panel

“The wording of the (Australian) amendment should closely mirror those changes already introduced in the European Union, particularly with reference to the definition of a cosmetic, and the requirement that the provision applies only to animal testing carried out for the purpose of inclusion of an ingredient in a cosmetic product”

Accord Australasia is opposed to using the *ICNA Act* to introduce a ban. In their view, the Act is not very well suited to enacting enforceable ‘bans’ or ‘prohibitions. As an alternative, *Accord Australasia* has proposed amendments to the *Customs (Prohibited Imports) Regulations 1956*. The possibility of a new and separate Act for cosmetics was also raised by industry. Labor is aware that if the *ICNA Act* was amended to ban animal testing, requirements included in existing schedules will need to be considered to avoid contradiction. In addition, while unlikely, the potential trade implications of any change in legislation will also need to be considered.

6. SEVERAL ENFORCEMENT OPTIONS

Selection of enforcement options will need to be considered in conjunction with concerns raised by industry

NICNAS currently enforces the *ICNA Act* through education, inspections, audits, directional compliance as well as legal action and criminal prosecutions where necessary. Additional enforcement options raised in submissions include checks of product information files conducted by Customs, appointment of a workplace delegate, on-going market surveillance by third party organisations, annual independent reviews and incentives for individuals who report breaches.

Some industry groups are concerned that neither companies or regulators will have the information required to comply with the ban. In regard to past, present and future animal testing on specific ingredients, *Accord Australasia* stated:

“It needs to be remembered that cosmetic manufacturing companies run the full gamut from large multinationals all the way through to hobbyists... it is unreasonable to expect them to become walking encyclopaedias on the current animal test status of every single ingredient they may use within their business”

Likewise, in order to obtain the information required to enforce the ban, industry believes the regulator would need to invest substantial resources to maintain an up-to-date database of all ingredients and their associated testing status. Motivating these concerns, some industry groups claimed there are imported products on the market now that contain materials that are not NICNAS approved. To achieve effective enforcement some industry groups believe the regulator would need to incur substantial costs that may be passed onto companies, thus decreasing the competitiveness of the cosmetic industry in Australia.

7. PRECEDENTS FOR CHANGE

Policy complexities have been overcome in other countries

In 2003, the EU prohibited testing of finished cosmetic products on animals. This ban came into effect on 11 September 2004 and was accompanied by a timetable for the implementation of the other prohibitions. A staged approach to phase-in was adopted:

- March 11 2009 - ban on testing cosmetic ingredients in the EU
- March 11 2009 - ban on marketing of cosmetics that have been, or the ingredients of which have been, tested on animals using a method for which a non-animal alternative has been validated
- March 11 2013 - ban on marketing of cosmetics that have been, or the ingredients of which have been, tested on animals, irrespective of the availability of non-animal alternatives.

A recurring theme in both the public submissions and during public forums was the opportunity for Australia to learn from the ban on cosmetic animal testing introduced in the EU. One public submission stated:

“The European Union has set the bar for this kind of legislation, proving that it is possible and leading by example”

Norway and Israel have instituted bans similar to that implemented in the EU, although the ban in Israel applies to cosmetics and a wider range of products. In June 2013, India banned the testing of cosmetics, and their constituent ingredients, on animals. Unlike the EU approach, currently the ban in India

VIEWS ON APPROACHES IN OTHER COUNTRIES

“Australia should follow the EU and require full listing of all animal tests carried out for both finished products and their ingredients, including the date on which a test was conducted and the precise regulatory purpose for the test”

Public submission

“The EU ban on animal testing in 2009 resulted in the reduction of animals used from 5,570 in 2005 to none”

Animal Justice Party

“The 28 member states of the European Union, Israel, India and Norway have taken the lead; Brazil and New Zealand are also heading in the right direction”

Public submission

does not affect the sale of cosmetics tested on animals in other countries, although this is currently being considered. There have also been changes in China whereby some domestically produced cosmetics no longer need to be tested on animals. Finally, several countries are currently considering a ban, including the United States, New Zealand, South Korea, Taiwan and Canada.

8. A BAN AS AN OPPORTUNITY

Australia should see a ban as an opportunity to meet demand for cruelty-free cosmetics and promote research on non-animal tests

Many contributors at our public consultations highlighted opportunities that may stem from the ban. Growing appetite for cosmetics that are not tested on animals is seen as an opportunity for industry. One public forum participant remarked:

“Animal testing on cosmetics will be banned in Australia eventually; companies who move first will benefit most”

A ban on animal testing also presents opportunities for further research on alternatives to animal tests. Acknowledging this, a public forum participant explained:

“A ban on animal testing will push scientists to develop improved non-animal tests”

The opportunity to promote research using non-animal tests was also emphasised in the *Be Cruelty-Free Australia* submission:

“Europe now commands the largest share of the rapidly growing, multi-billion dollar global in vitro testing market, a result directly attributed to the EU’s support for animal testing bans”

9. AREAS FOR FURTHER CONSIDERATION

There are a range of related policy and regulatory concerns that may require further consideration

The Labor Party’s national consultation was focused on phasing out the import, manufacture, sale and advertising of cosmetics or cosmetic ingredients tested on animals. The scope of the consultation was deliberately narrow with a view to achieving meaningful change. However, during these discussions, several broader issues were raised that are worth acknowledging:

- **Product labelling:** Product labelling was mentioned in every public forum and 15 per cent of public submissions discussed a concern with labelling or packaging. A commonly expressed view was that consumers need better access to information that allows them to easily ascertain whether a product has been tested on animals. For example, a public submission noted:

“...as a consumer, it is very confusing trying to buy ethically when it comes to cosmetics and cleaning products etc. If there was one nationally recognised logo/ label that

consumers could look for when purchasing such products it would make the process a lot easier.”

- Cosmetics regulation: Industry has suggested the need for a review of cosmetics regulation that considers opportunities for alignment with regulation in other jurisdictions and potentially regulating cosmetics ingredients separately to industrial chemicals.
- Research funding for non-animal test alternatives: A number of contributions highlighted the need for any change to be part of a holistic approach that includes additional funding for research that invests in the development of non-animal testing methodologies.

10. A STRONG CALL FOR ACTION

Participants have been energised by the opportunity to contribute to the development of this policy, and they want to see action now

Labor is delighted with the interest, curiosity and energy that all contributors brought to the national consultation. There was tremendous enthusiasm that Australia has the opportunity to join the EU, Israel and others as part of a global movement to ban cosmetic testing on animals. The number of public submissions is far in excess of what is normally received during a public policy consultation. In addition, discussion at the public forums balanced passion with respectful debate so that all participants felt empowered to contribute to development of this important policy. One participant stated:

“Education on this topic is lacking and I’ve learnt a lot during the discussion tonight”

Similarly, industry welcomed the opportunity to present their views, both in writing and during in-person meetings. Understanding the perspectives of industry has enabled Labor to engage in a deep and thoughtful consideration of the complexities associated with introducing a ban on animal testing.

NEXT STEPS

Labor will progress work on this important policy

Labor will progress work on this policy and has committed to using input from the public consultation to prepare policy options. These options will be discussed within the Federal Labor Caucus.

Once Labor agrees on our policy, we will turn our attention to the implications for legislation. There are some challenges to progressing policy change from Opposition. We would likely need the Government's support to allow proposed legislation to be debated and voted on in the Parliament. Substantively, any proposed changes would require consultation with the regulator. Again, these activities will not be possible without support from the Government.

We acknowledge that it may take time to re-work cosmetic approval processes so that regulators can establish an ingredient that is safe for human use without animal testing. Despite this, we look forward to continuing to consult widely to achieve the best possible outcome for all concerned in a timely manner.

Please stay tuned to this website for future updates: <http://www.alp.org.au/cosmeticstesting>

