AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Review of the information standard - Cosmetics ingredient labelling

Consultation paper

November 2019

Disclaimer

The Australian Competition & Consumer Commission (ACCC) has developed this consultation paper to seek the views of stakeholders about the mandatory information standard for cosmetics ingredient labelling.

Table of contents

1. Introduction

The Australian Competition and Consumer Commission (**ACCC**) is reviewing the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991 (the **information standard**) to assess its ongoing efficacy since the ACCC's last review in 2008.

This paper discusses four policy options and we invite feedback from business, consumers, associations, safety experts, government and interested members of the public. You do not need to answer all or any of the specific questions to make a valid submission.

This consultation may be the only opportunity for you to provide input into this review. We encourage you to make a submission.

2. Policy options

This consultation paper discusses four policy options:

Option 1 Maintain the current information standard (status quo)

Option 2 Amend the information standard

Option 3 Allow overseas standards

Option 4 Revoke the information standard.

3. Background

American research estimates that women are exposed to an average of 168 chemicals as part of their daily personal care routine, and men average 85 chemicals daily.[1]

The information standard was introduced in 1991 to address a market failure where consumers did not have ready access to information about ingredients contained in cosmetic products. This information allows consumers to:

- avoid known allergens, irritants or potentially harmful chemicals
- make value comparisons between products based on ingredients.

Information is also important for health care providers as it enables them to recommend or provide appropriate treatment where a consumer suffers an adverse reaction from the use of a cosmetic product. Access to ingredient information also reduces costs to the Australian health system where a person may otherwise require treatment for allergic reactions to cosmetics.

According to the Australasian Society of Clinical Immunology and Allergy (**ASCIA**)[2], skin allergies and reactions to chemical ingredients in cosmetics are common in Australia. Based on overseas studies it is estimated that about 10 per cent of the general population experience side effects, hypersensitivity or allergy-related irritation from cosmetics.[3]

[1] Harvard T.H. Chan School of Public Health, https://www.hsph.harvard.edu/news/hsph-in-the-news/personal-care-products-health-risks/, accessed 21 December 2018

[2] ASCIA, https://www.allergy.org.au/patients/skin-allergy/contact-dermatitis, accessed 21 December 2018

[3] *Cosmetics and contact dermatitis,* Wolf R, Wolf D, Tüzün B, Tüzün Y. Dermatol Therapy. 2001;14:181–7

> *"Adverse reactions mainly depend on the type of the chemical component of the cosmetic product and the exposure time. There is a clear correlation between the frequency of cosmetic applications and the development of allergies. An important factor influencing the formation of contact allergy is also the place of application. The use of cosmetics on irritated or inflamed skin increases the risk of side effects. Fragrances, preservatives and dyes are the most important components contained in cosmetics inducing contact hypersensitivity, while substrates, emulsifiers, stabilizers, viscosity enhancing agents, antioxidants, moisturizing and lubricating substances are less reactive."* [4]

The most common chemicals in cosmetics include fragrances, preservatives, antioxidants, ultraviolet absorbers, humectants, emollients, emulsifiers, acrylates, hair dyes, and nail polish components.[5]

Generally, reported reactions to cosmetic ingredients are minor (e.g. skin irritations and contact dermatitis) and treatable with over-the-counter medications, or resolve after a person ceases using the product. Although rare, anaphylactic reactions can occur in some instances where sensitivities to chemicals may develop over time (e.g. hair dyes).

Unlike the provision of safety standards, information standards are not restricted to safety issues and can address a range of issues that are not safety related. The purpose of the information standard is to address, at least in part, the asymmetry of information by requiring suppliers to include a list of ingredients with the cosmetic product, which can inform consumer purchasing decisions. The information standard does not regulate the chemical ingredients used in cosmetic products; this is the responsibility of other regulatory agencies as discussed below.

The market

According to analysis by Statista, the cosmetic and personal care market realised total revenue of US$414 billion worldwide in 2018, of this total Australia's cosmetic retailing industry accounts for revenue of nearly US$6 billion. The online market is increasingly relevant for cosmetics, accounting for 17 per cent of revenue in 2018 and expected to increase to 26 per cent by 2023.[6]

The retail cosmetics market can be divided into six segments:

1. Cosmetics (make-up, nail varnish, self-tanning products)
2. Skin care (creams, lotions)
3. Personal hygiene (soaps, shower gels, bathing products, deodorants, shaving products)
4. Hair care (shampoo, conditioner, hair spray, gel and dyes)
5. Fragrances (perfume and eau de toilette)
6. Oral care (toothpaste and mouth hygiene products).

Some of the main suppliers of cosmetics are active in all six markets, while others supply in only one of these markets. Skin care represents the largest segment of the cosmetics market at 29 per cent, followed by hair care at 18 per cent.

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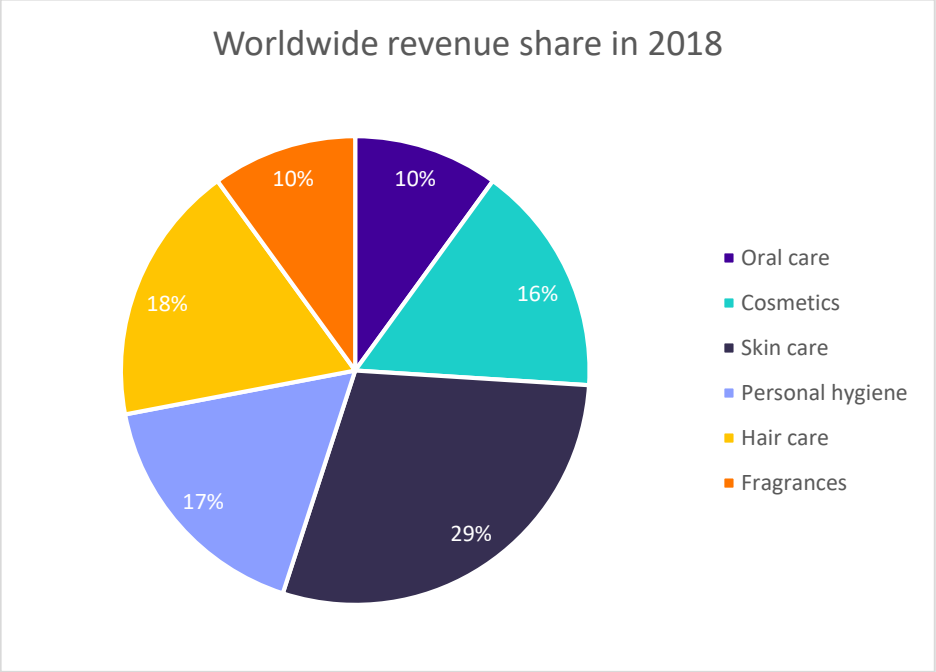
[4] Zukiewicz-Sobczak WA, Adamczuk P, Wróblewska P, et al, Allergy to selected cosmetic ingredients, *Postepy Dermatol Alergol*, 2013, pp. 307–310

[5] *Hazardous Ingredients in Cosmetics and Personal Care Products and Health Concern: A Review* Siti Zulaikha R., Sharifah Norkhadijah S. I.*, Praveena S. M. Department of Environmental and Occupational Health, Faculty of Medicine and Health Sciences, Universiti Putra Malaysia, Selangor, Malaysia, 2015

[6] Statista, https://www.statista.com/outlook/70000000/107/beauty-personal-care/australia, accessed 5 June 2019

The cosmetic industry has high competition and low concentration, with the top four players accounting for less than 15 per cent of total industry revenue.[7] International brand owner L'Oreal continues to lead the industry, followed by Unilever Australia, Procter & Gamble and Colgate-Palmolive.[8] In Australia, imports are believed to account for over 70 per cent of domestic demand.



[9]

According to analysis by IBISWorld, Australia's cosmetics manufacturing industry is estimated to generate AUD$1.5 billion in revenue in 2018-19, with AUD$970 million (64 per cent) of this derived from export earnings. The major Australian export markets include New Zealand, Hong Kong, China and the United States.[10]

Demand for Australian manufactured cosmetics is growing due to our reputation for producing high quality products. Over the last five years, Australian exports have grown by an average of 10 per cent per annum, making exports a key market for Australian cosmetic manufacturers. Emergent environmental awareness has increased consumer demand for ethical products, prompting manufacturers to focus production on natural, organic and chemical-free cosmetics.[11]

The information standard

Section 134 of the Australian Consumer Law (**ACL**) provides that the Commonwealth Minister may make an information standard that makes provision about the content of information or requires the provision of specified information about a product or service. Unlike a safety standard, the Minister does not need to be satisfied that an information standard is reasonably necessary to prevent or reduce the risk of injury to a person.

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[7] IBISWorld, http://clients1.ibisworld.com.au/reports/au/industry/productsandmarkets.aspx?entid=1879, accessed 29 November 2018

[8] Euromonitor International, Beauty and Personal Care in Australia, May 2018, https://www.euromonitor.com/beuty-and-personal-care-in-australia/report, accessed 30 November 2018

[9] Statista, Cosmetics & Personal Care Report 2019, Statista Consumer Market Outlook – Market Report, April 2019

[10] IBISworld Industry Report C1852, http://clients1.ibisworld.com.au/reports/au/industry/default.aspx?entid=191, accessed 23 July 2019

[11] IBISworld, http://clients1.ibisworld.com.au/reports/au/industry/currentperformance.aspx?entid=191, accessed 23 July 2019

The information standard defines cosmetic products as substances or preparations intended for placement in contact with any external part of the body, including the mouth and teeth, for the purpose of:

- altering the odours
- changing the appearance
- cleansing
- maintaining
- perfuming
- protecting the body.

The information standard applies to a broad range of products including: makeup, face creams, depilatories, shaving creams, hand wash, body lotions, hair dyes, fragrances, and toiletries such as deodorant and toothpaste. It also applies to products that may not generally be considered cosmetics, for example hygienic wipes, false nails and eyelashes, temporary tattoos, and children's face paints. Sunscreens with a sun protection factor (**SPF**) rating of four and under are also regulated as a cosmetic product and subject to ingredient labelling requirements.[12] The information standard does not apply to product categories including cosmetic samples and testers, or therapeutic goods within the meaning of the *Therapeutic Goods Act 1989.*

Cosmetic products are required to display a list of ingredients on the product's container or on the product itself. Where the container or product is of a size, shape or nature that prevents this, the information must be shown in another way to provide that a consumer can readily access information about the ingredients in the product (e.g. displayed on the shelf near where the product is sold).

The information standard allows for the listing of ingredients in the following way:

- ingredients (except colour additives) in concentrations of one per cent or more in descending order by volume or mass, followed by
- ingredients (except colour additives) in concentrations of less than one per cent in any order, followed by
- colour additives in any order.

The names of the ingredients must be in either their English names or their International Nomenclature Cosmetic Ingredient (**INCI**) names. There may also be a list of ingredients in another language in addition to these labelling requirements. Fragrances and flavours must also be disclosed, but do not need to include the ingredients composition of the fragrance or flavour. The list of ingredients must be prominently shown and clearly legible.

The information standard also provides a facility whereby suppliers may seek formal approval from the Minister to have an ingredient on their product listed as 'other ingredient'. In order for the Minister to consider such an application, the supplier must be able to show that revealing the name of the ingredient would prejudice a trade secret and that the ingredient is unlikely to be harmful to a consumer.

The Australian regulatory framework

The information standard operates within and relies on a broader regulatory framework that

[12] Sunscreens with an SPF rating of over four are regulated as therapeutic goods by the Therapeutic Goods Administration (TGA) and may have different or additional requirements. Secondary sunscreens that meet the requirements of the TGA's Therapeutic Goods (Excluded Goods) Determination 2018 are regulated as cosmetics.

is concerned with facilitating the safe supply of cosmetic products and providing information about them to potential end users. The responsibility for regulating chemical products is shared across several government agencies including: the Therapeutic Goods Administration (**TGA**), the Office of Chemical Safety (**OCS**), the National Measurement Institute (**NMI**) and the Department of Home Affairs (**DHA**).

The Office of Chemical Safety administers the National Industrial Chemicals Notification and Assessment Scheme (**NICNAS**), which assesses the safety of new chemicals before they can be imported or manufactured in Australia. It also administers the Australian Inventory of Chemical Substances (**AICS**) which lists the chemicals that may be imported or manufactured in Australia without pre-market notification and assessment by NICNAS, and specifies the conditions for their importation, manufacture and use. From 1 July 2020, NICNAS will be replaced by the Australian Industrial Chemicals Introduction Scheme (**AICIS**) established under the *Industrial Chemicals Act 2019*.

The Therapeutic Goods Administration regulates products that make therapeutic claims under the *Therapeutic Goods Act 1989*. Products regulated by the TGA are not cosmetic products for the purpose of the information standard. The TGA's *Therapeutic Goods (Excluded Goods) Determination 2018* sets out specific requirements for products that are excluded from its regulation. Once excluded from regulation by the TGA, these products are regulated as cosmetics, with ingredients subject to the requirements of NICNAS, and require labelling in accordance with the information standard.

The National Measurement Institute administers regulations that stipulate labelling requirements relating to the measurement, marking and packer's identification of consumer products including cosmetics under the *National Measurement Act 1960*.

The Department of Home Affairs regulates the content of lead in cosmetics under the *Customs (Prohibited Imports) Regulations 1956*. Cosmetic products containing more than 250 mg/kg of lead or lead compounds (calculated as lead) are prohibited from importation unless the Minister or an authorised person grants an exemption. This prohibition excludes products containing more than 250 mg/kg of lead acetate designed for use in hair treatments.

Injuries

Suppliers are required to submit a mandatory injury report to the ACCC when they become aware that a product they supply has caused (or may have caused) the death, serious injury or illness of a consumer.

From 2016 to 2018, we received over 900 mandatory injury reports relating to injuries sustained from cosmetic products. Over 96 per cent of these reports were for mild reactions to cosmetics, with the most common reaction being a skin rash or contact dermatitis. Remaining reports indicated more serious reactions including hair loss and breathing problems due to a severe allergy.

Effectiveness of the information standard

These incidents highlight that some consumers continue to suffer allergic reactions to cosmetic products, and confirm the ongoing importance of the information standard to provide relevant information to be readily able to be read by consumers. We have assessed that incidents of consumer detriment would likely increase in the absence of clear and comprehensible information about cosmetic ingredients.

The small number of mandatory injury reports (when compared to the abundant use of cosmetics) also suggests that the information standard has contributed towards limiting

incidents that would have occurred in the absence of labelling requirements. This has resulted in a positive net benefit on the Australian health system. It is difficult to reliably estimate the quantum of costs that would accrue in the absence of the information standard but categories of cost include the impact on the health care system, lost labour hours, consumer utility loss where they could not use the product, and costs to suppliers from addressing consumer complaints and facilitating product returns.

As the information standard is limited to the provision of information already available to manufacturers and suppliers (via a label), it is achieved at a small input cost on production to produce and apply a label or to provide this information via an alternative means. Notwithstanding this, we understand there would be costs borne by suppliers to establish and maintain a compliance framework to ensure that products are labelled according to the requirements of the information standard (e.g. labour, search and documentation costs).

4. Compliance

The ACCC has identified high levels of compliance with the information standard among the major brands sold at retail level, and concluded that major suppliers are aware of its requirements.

Non-compliance has been detected in the online market and among some independent retailers that supply branded and unbranded products intended for the local market from which they are imported (e.g. Japan or China). By way of example, in 2018 thirteen cosmetic products were recalled for failing to provide ingredients in either English or by their INCI names, in breach of the information standard.

The ACCC continues to undertake surveillance and liaise with these suppliers to raise awareness about their responsibilities under the information standard and mitigate the issue. This type of engagement has proven effective in past surveillance activities, as evidenced by the high levels of compliance.

Another category of non-compliance was in the discount and variety sector which supplies toy and novelty products that, as a cosmetic, must meet the requirements of the information standard. These suppliers are mainly sole traders that supply a vast range of products including face paints, fake blood and temporary tattoos. Some of these suppliers and the associated product manufacturers may have been unaware of the information standard and its requirements, or may not be aware that these products are defined as a cosmetic for the purpose of the information standard. In 2018, by way of example, there were six recalls of face paints and temporary tattoos, none of these recalled products contained a list of ingredients.

In 2011 and 2015, the ACCC conducted audits on a range of cosmetics to verify their ingredient contents following an increase in the number of mandatory injury reports. Although the majority of reports were for minor and short-lived reactions to products, the total number of reports received prompted concerns that ingredient labels may not have accurately listed the chemical contents of the products.

The audits found ingredient labels were provided with the cosmetic products in compliance with the information standard and that they accurately identified and listed ingredient information. While the injury reports weren’t a consequence of policy issues with the information standard, it is our assessment that the significant number of reports during this period reinforces its ongoing need.

5. Issues & proposed solutions

Children's cosmetics

The information standard applies to cosmetic products regardless of whether the products are intended for use by children or adults. This means that cosmetics marketed and supplied to children, such as face and body paints[13], temporary tattoos, makeup kits, and baby personal hygiene products are captured by the information standard. Suppliers, including those in the discount and variety sector, may not be aware of the information standard or may not be aware that products of this type are cosmetics for the purpose of the information standard.

Suppliers may also consider that children's cosmetics are toys rather than cosmetics. In this instance, they may consult the regulations for toys and observe that, as cosmetic products are not captured there, there are no compliance requirements.

To address this issue we are consulting on an option to include an explanatory note into the information standard to make it clear that children's cosmetics (e.g. makeup, face paints and temporary tattoos) fall within the definition of a cosmetic product and are required to display ingredient information.

For completeness this option would also insert a note into the relevant children's toy standards so that suppliers may be informed that the information standard also applies to face paints, temporary tattoos and children's cosmetics.

Nanomaterials

Nanomaterials are materials that contain nanoparticles with one or more dimensions measuring between one and 100 nanometres (**nm**). At this small scale, a chemical may have different properties to its conventional 'bulk' form, including its reactivity, strength, and electrical and magnetic behaviours. This altered form may lead to unique properties that could affect the function, quality, safety or effectiveness of the cosmetic products containing them. The NICNAS regulates industrial nanomaterials used in products (including cosmetics) within the existing framework for conventional industrial chemicals as noted above in this paper.

Nanomaterials may be present in cosmetics under the following circumstances:

- Nanomaterials that are produced as an artefact of the manufacturing process and not intended to impart any functional or technical properties on the product.

[13] Finger paints are excluded from cosmetic regulations and instead captured under Consumer Protection Notice No. 1 of 2009 – *Consumer Product Safety Standard for Lead and Certain Elements in Children's Toys*

- Manufactured nanomaterials intentionally produced, manufactured or engineered and included in a product to achieve a specific purpose (e.g. colorant or UV-filter).

Regulatory treatment of nanomaterials

For the purposes of information provision to consumers, in Europe and New Zealand nanomaterials are subject to the same disclosure requirements as any other cosmetic ingredient, only these must be identified with the word 'nano' in brackets after the name of the ingredient. This is not currently a requirement in Australia, the United States or Canada. Given community interest in accessing information about nanomaterials, and the purpose of the information standard being the provision of information to consumers, the ACCC is considering introducing a requirement to identify nanomaterials (if contained in the cosmetic product) via ingredients labelling.

If the information standard was updated to include the declaration of nanomaterials, it could rely on existing disclosure requirements in overseas standards. The information standard could also include a definition of 'nanomaterial' to facilitate industry compliance. In doing so, it would be prudent that the definition was consistent with other Australian and international definitions, particularly those definitions in other regulatory schemes applicable to cosmetics. We note that although there is not a uniform definition for nanomaterial across international regulations, our preliminary assessment through consultation with NICNAS is that the definition in European regulations is consistent with the definition proposed to be included in domestic legislation.

Cosmetic ingredient labelling is regulated in Europe via Regulation (EC) No 1223/2009 of the European Parliament and of the Council, which defines a nanomaterial as:

> *"…an insoluble or biopersistant and intentionally manufactured material with one or more external dimensions, or an internal structure, on the scale from 1 to 100 nm."*

The New Zealand standard replicates the definition for nanomaterials and the labelling requirements of the European standard.

The ACCC has undertaken initial consultation with the Office of Chemical Safety and is conscious of the need for consistency between definitions in Australian regulatory structures. The OCS has advised that delegated legislation under the *Industrial Chemicals Act 2019* will include a definition of 'nanoscale'. The current proposed definition is:

> *"…the industrial chemical is a solid or in a dispersion and consists of particles in an unbound state or as an aggregate or agglomerate, at least 50% of which (by number size distribution) have at least one external dimension in the particle size range of 1 to 100 nm"*.

We note that cosmetic ingredient labelling is regulated in the United States via Part 701 of Title 21 of the Code of Federal Regulations (21 CFR), which does not contain a legal definition for nanomaterials.

Online supply

Fifty five per cent of the world's population regularly shop online to purchase goods via the internet. Cosmetic sales currently represent 18 per cent of all online shopping sales in Australia, and this figure is predicted to increase to 26 per cent by 2023.[14]

[14] Cosmetics & Personal Care Report 2019, Statista Consumer Market Outlook – Market Report, April 2019

The online market has facilitated the entry of private individual, small-scale producers through eBay, Etsy and social networking websites such as Facebook. The ease with which cosmetic products such as soaps and shampoos can be produced at home and supplied via online platforms and local farmer and craft markets poses a challenge for regulators.

The ACCC has engaged with online selling platforms to improve product safety compliance in the online marketplace. These platforms are undertaking initiatives to improve suppliers' awareness of unsafe products, including tailored compliance alerts, sending information to suppliers about Australian regulations, and putting processes in place to enable swifter identification and removal of unsafe product listings.

The ACCC is also educating suppliers in the online marketplace through initiatives such as the Selling online hub for suppliers and platforms on the Product Safety Australia website.

The information standard applies to cosmetic suppliers whether they sell online or in a bricks and mortar store. However, as currently constructed the information standard does not require online suppliers to list ingredient information on their online platform, rather it applies when the product is actually supplied to the consumer (post their purchasing decision). With the increasing prevalence of online sales, the ACCC has identified that this is limiting the intent of the information standard to inform consumers prior to the point of purchase.

We are considering introducing a new requirement in the information standard to require cosmetic suppliers to list ingredient information on their online platform. This would provide online consumers with the same level of information that they would receive at a bricks and mortar store, affording them equivalent information to guide their decision making. In considering this requirement, we are aware that an online platform is likely to ship products to a number of regulatory jurisdictions with somewhat different labelling requirements. To address this matter, the requirements for online disclosure could be restricted to list the cosmetic ingredients through the use of the INCI database or the ingredient's common English terms, as these requirements are consistent across the various overseas and Australian standards.

Additional labelling information

The information standard does not require the inclusion of certain information on a label, including the:

- date of expiration/minimum durability
- batch number of manufacture
- name and address of manufacturer/distributor.

Detailing the date of expiration or minimum durability may assist consumers to make full use of a product and to minimise waste which would increase consumer utility. However, if the information standard was to require the disclosure of expiry dates, such dates would need to be accurate and defensible so they do not risk misrepresenting the actual durability and lifespan of the particular product. Additionally, requirements for batch numbers and to identify the manufacturer or distributor would assist with product recalls in the event that a product was identified as defective.

The addition of this information on an existing label is unlikely to increase compliance costs, especially where information about batch numbers is already kept by a manufacturer or distributor. These requirements could be included in a new information standard or, as discussed below, by permitting suppliers to achieve compliance through reference to an overseas standard (which already includes these requirements).

6. Overseas standards

When making recommendations for new and amended regulations the *Australian Government Guide to Regulation 2014* requires policy makers to consider overseas standards as an option for regulation.

The European Union, New Zealand and the United States are among a number of jurisdictions with mandatory requirements for cosmetic ingredient labelling. Each of these jurisdictions have requirements for labelling within the scope of a broader set of requirements. However in Australia these broader requirements are the responsibility of regulators other than the ACCC and are beyond the scope of the information standard.

The ACCC has undertaken a detailed assessment of the European, New Zealand and United States mandatory standards against the criteria for using international standards in consumer product safety standards and bans[15]:

- European Union – Chapter VI, Consumer Information, Article 19, Labelling requirements of the Cosmetics Regulation (EC) No 1223/2009
- New Zealand – Cosmetics Group Standard 2017 – HSR002552
- United States – Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labelling Act and regulations
- International Organization for Standardization (ISO) – ISO 22715 – Cosmetics – Packaging and labelling.

European regulations

The European mandatory standard is far broader in scope than the information standard, with ingredients labelling just one subset of requirements. Even within this subset of requirements, the European mandatory standard consider matters that are not currently captured by the information standard such as:

- name or registered name of the responsible person
- weight
- expiry date
- batch number of manufacture
- function of a cosmetic product.

In Australia, some of these requirements are mandated through other regulatory frameworks including the *National Measurement Act 1960*, while other requirements (e.g. expiry date, batch number) do not have an equivalent regulation.

When considering matters addressed by the information standard in isolation, the European mandatory standard appears to have broadly consistent requirements except that it requires nanomaterials to be disclosed in the ingredient information. Additionally, ingredients must be listed in the language determined by the law of the member state in which the product is made available for use, whereas in Australia the ingredients are required to be listed in English.

On the face of this analysis, the European mandatory standard appears suitable for Australian conditions. The European mandatory standard requires a cosmetics label to list

[15] ACCC, International standards for the safety of consumer products - criteria for acceptance, ACCC policy principles, 22 July 2015, www.productsafety.gov.au/content/index.phtml/itemId/1014180

cosmetic ingredients consistent with the information standard and includes additional requirements that a label list information about nanomaterials, expiration and the function of the cosmetic. These requirements are consistent with the scope of the information standard to provide information about a cosmetic product.

Notwithstanding this point, the ACCC has not made a detailed comparison of other labelling requirements, such as those detailed in the *National Measurement Act,* to assess whether there are material deviations between European and Australian regulations. Reference to the European mandatory standard via the information standard would be limited to the scope of the information standard. Prospective suppliers would need to satisfy themselves that they had met other regulatory requirements detailed in all relevant Australian laws.

Permitting compliance through reference to the European mandatory standard is likely to benefit suppliers by reducing compliance costs as they would not need to be familiar with the information standard in addition to the European mandatory standard. It would also appear to benefit cosmetic suppliers that export products into Europe and other jurisdictions that rely on the European standard.

Consumers would benefit from additional information disclosure requirements for nanomaterials, the function of the cosmetic product and expiration date.

New Zealand regulations

The New Zealand mandatory standard closely follows the European mandatory standard. When considering matters addressed by the information standard in isolation, the New Zealand mandatory standard appears to have broadly consistent requirements except that it requires nanomaterials to be disclosed in the ingredient information. Additionally, all imported or manufactured nanomaterials intended to be added to a cosmetic product must be reported to the New Zealand Environmental Protection Authority (**NZEPA**).

The New Zealand mandatory standard does not require compliance with the ingredient labelling requirements in subclause 1.2 of Part 1 if the label on a cosmetic product is compliant with labelling regulations as required in Australia, Canada, the European Union or the United States, as if the substance were for sale or supply in those countries. Notwithstanding this alternative compliance model, a supplier that seeks compliance via this mechanism must meet other labelling requirements of the New Zealand mandatory standard, including the requirement to disclose nanomaterials. We note that policy option 3 would achieve the same effect as New Zealand's alternative compliance model.

On the face of this analysis, the New Zealand mandatory standard appears suitable for Australian conditions under the same circumstances as the European mandatory standard. The benefits for manufacturers, suppliers and consumers from adoption of the European mandatory standard apply to adoption of the New Zealand mandatory standard.

United States regulations

The Unites States mandatory standard appears to be broadly consistent with the information standard, as well as European and New Zealand mandatory standards. For example, the United States mandatory standard requires that cosmetic ingredients are listed in descending order of prominence.

The United States mandatory standard differs in the range of permitted databases that a supplier can rely on when listing cosmetic ingredients. While the information standard requires that ingredients are listed in either their English or INCI names, the United States mandatory standard allows a cosmetic supplier to use the INCI name, or in absence, a name

given by either the United States Pharmacopeia (**USP**), the National Formulary, the Food Chemical Codex or United States Adopted Names (**USAN**).

We have some concerns that adoption of the United States mandatory standard could lead to confusion about a cosmetic's ingredients if those ingredients are referenced through the use of inconsistent nomenclature. This may hamper the identification of certain ingredients to which a consumer may be allergic. However, this matter could be addressed by permitting compliance via the United States mandatory standard without reference to the USP and USAN databases as permitted alternatives.

Similar to the European and New Zealand mandatory standards, the Unites States mandatory standard considers additional requirements to the information standard (e.g. disclosure of name and place of business, warning and caution statements, information about 'material facts'). Information of this type, on the assumption that it is informative to the consumer, would meet the policy intent of the information standard.

As with the information standard, there is no requirement in the United States mandatory standard to disclose nanomaterials. If the information standard was to adopt the European and New Zealand mandatory standards, along with the United States mandatory standard, this would give rise to two different requirements for the treatment of nanomaterials. In this case we would have some reservations about adopting the United States mandatory standard given this would lead to inconsistent labelling in the Australian market. This could be addressed by permitting compliance via the United States mandatory standard where that standard has the additional requirement to disclose the use of nanomaterials in a product.

Finally, other requirements under the United States mandatory standard for weights and measures do not accord with Australian regulations, which require provision of information through the use of the metric system. However, these particular requirements fall outside the broader scope of the information standard and need not be considered in this review.

On the basis of our preliminary assessment, we are of the view that the United States mandatory standard is sufficient where a supplier lists cosmetic ingredients in either English or using their INCI name. If a supplier were to list ingredients using naming conventions specific to the United States, this may hamper the identification of certain ingredients and fail to meet the objective of the information standard to inform Australian consumers and health care professionals. This view would need to be balanced against the possible costs to consumers where a cosmetic produced in the United States would need a different label to be applied, or where, in the most extreme example, a product would not be imported due to the differing labelling regimes.

International Organization for Standardization (ISO) voluntary standard

The voluntary international standard *ISO 22715 – Cosmetics – Packaging and labelling* is broadly comparable to the discussed mandatory standards for scope, ingredient listing and packaging requirements. Compared to the information standard it includes requirements for additional information about batch numbers, product function and the name and address of the responsible person, which is consistent with European and New Zealand regulations. The ISO standard also strongly supports the use of ingredient listing through use of the INCI database.

On this basis the ISO standard appears suitable for reference in a new information standard. However, unlike the European and New Zealand standards the ISO standard does not include a requirement that the use of nanomaterials is disclosed to consumers. Therefore adoption of the ISO standard could include an additional requirement to disclose nanomaterials where this would provide for a consistent approach to labelling where the European and New Zealand mandatory standards were adopted.

7. Detailed policy options

Option 1 – Maintain the current information standard (status quo)

Description

Under this option the information standard would continue to operate in its current form without amendment.

Benefits

Consumers would continue to have access to information about cosmetics which would permit them to avoid known allergens, irritants or potentially harmful chemicals. Information would continue to be available to health care professionals to facilitate patient diagnosis and presentations to the health care system would continue to be minimised. This option also provides manufacturers and other industry participants with a known, consistent and understood regulatory framework.

Limitations

This option may result in greater compliance costs for manufacturers, exporters and suppliers that would otherwise seek to achieve compliance through reference to an overseas standard (option 3). This may result in consumer detriment where such costs were passed to the consumer and resulted in more expensive products. This option may also result in cosmetic products not being supplied to the Australian market where additional compliance costs are greater than returns to suppliers.

This option would not facilitate the disclosure of ingredients information to consumers purchasing online, or allow access to certain information already available to consumers in overseas markets (e.g. nanomaterials and expiry dates).

Maintaining the information standard in its current form would not address the issue of children's cosmetic suppliers inadvertently failing to provide ingredient information where they are unaware of their obligations.

Our preliminary assessment is that this option would result in a net cost to the community.

Option 2 – Amend the information standard

Description

This option would make a new information standard to:

- Require the disclosure of nanomaterials in the ingredient information.
- Require additional information on a cosmetic label to include the:
  - name or registered name of the responsible person
  - expiry date
  - batch number of manufacture
  - function of a cosmetic product.
- Include an explanatory note to make it clear that certain children's cosmetics (e.g. makeup, face paints and temporary tattoos) are captured by the information standard. For completeness an explanatory note could also be included in the relevant toy standards.

- Require suppliers of cosmetics in the online marketplace to provide ingredient information with the online listing of their products.

Benefits

This option includes the benefits detailed in option 1.

Consumers would benefit from additional information to help inform purchasing decisions through the disclosure of nanomaterials and making ingredient information available with online listings. This would reduce costs associated with returning unwanted products to the supplier or through disposal.

Clarifying the scope of the information standard would lessen inadvertent non-compliance where suppliers of children's cosmetics mistakenly fail to provide ingredient information with products. This may also reduce the incidents of injuries to children, and subsequently reduce the cost to Australia's health care system that arise when consumers seek treatment for allergic reactions to cosmetics. It would also reduce compliance costs for suppliers that would otherwise have been subject to a recall process.

Limitations

This option would appear to result in higher compliance costs to manufacturers, suppliers and exporters where those entities could have achieved compliance through reference to an overseas standard. As with option 1, there would be some consumer detriment where higher compliance costs resulted in more expensive products or their non-supply.

Costs would accrue to label redesign and the production of new label templates, although these would appear to be a one-off cost. Ongoing printing costs for redesigned labels would likely be the same as costs under the current information standard. These costs could be addressed through permitting compliance with overseas standards.

This option may also result in additional costs associated with listing product ingredients online, for example where a supplier would need to make modifications to their online platforms.

Option 3 – Allow overseas standards

Description

This option would build on option 2. While allowing compliance to be achieved through meeting the labelling requirements of the New Zealand and European mandatory standards as permissible alternatives to the information standard, it would also require ingredient information to be provided online.

This option could also consider adoption of the ISO standard, either with an additional requirement that a supplier seeking compliance through this option also list nanomaterials where they are used, or with the caveat that products that conformed to its requirements would not list the use of nanomaterials.

Additionally, this option could consider adoption of the United States mandatory standard with the aforementioned requirement that the supplier lists cosmetic ingredients in either English or using their INCI name.

Benefits

Compared to option 2, this option would appear to reduce the cost of compliance for manufacturers, suppliers and exporters whose products comply with the labelling

requirements of overseas standards as they would not need to be separately labelled for the Australian market.

Consumers would benefit from the same additional information under option 2, as well as potentially lower costs for cosmetic products or a wider range of available cosmetics.

Limitations

There appear to be few limitations from adopting the overseas standards as this option would increase information available to consumers and potentially reduce compliance costs for suppliers when compared with option 1 or option 2.

Allowing compliance through reference to the United States mandatory standard and ISO standard without requiring a list of nanomaterials would lead to inconsistency in labelling information for consumers for these ingredients. The extent of this limitation is dependent on the utility value consumers place on this information and the extent to which it would impact their purchasing decisions.

Like option 2, this option may also result in additional costs associated with listing product ingredients online.

Option 4 – Revoke the information standard

Description

The information standard would be revoked and suppliers of cosmetics would not be required to provide ingredient information to consumers. Some suppliers may continue to supply ingredient information which may differ across suppliers and some may not provide ingredient information at all, or do so in languages other than English.

Benefits

This would appear to lead to a reduction in compliance costs for industry compared to the status quo. Compliance savings would be reduced where a new regulation would permit compliance with overseas mandatory standards and the ISO standard.

This option will lead to consumer detriment when compared to the other options.

Limitations

Revoking the information standard could lead to the recurrence of issues that occurred before it was introduced. It is likely that incidents of consumer reaction to cosmetics (e.g. skin allergies) would increase in the absence of clear and readily understood ingredient information which would result in consumer detriment.

Medical professionals would be hampered in their ability to quickly identify the ingredients of a cosmetic product, limiting their ability to diagnose and provide appropriate treatment to a patient. This could subsequently make diagnosis and treatment difficult, delayed, costly, and time consuming, resulting in increased costs to government and an additional burden on Australia’s health system.

This approach would be inconsistent with regulatory approaches in other jurisdictions which have assessed that there is a clear public benefit in providing cosmetic ingredient information. Our preliminary view is that this option is likely to result in a net community detriment.

8. Key questions

Please consider the following questions in your submission. Submissions do not need to answer all or any of these questions and may include any information that might be relevant for this review.

1. What is your preferred option and why?
2. Is the information standard an effective mechanism to inform consumers and health care professionals about ingredients in cosmetic products?
3. What are the costs associated with meeting the compliance requirements of the current information standard?
4. Do you think online suppliers should be required to provide ingredient information with the listing of their cosmetics?
5. Do you think suppliers should be required to disclose nanomaterials in the list of cosmetic ingredients? Are there practical implications in adopting this requirement?
6. Do you think suppliers should be required to disclose additional information on their cosmetics (e.g. batch number, date of expiration, name and address of the manufacturer or distributor, function of the cosmetic product)?
7. If you are a supplier, can you advise of any increased costs associated with option 2 and option 3?
8. Are there additional matters the ACCC should consider?
9. Do you have any other comments or suggestions?

9. Have your say

The ACCC invites you to comment on this review. This consultation is open from 14 November to 13 December 2019.

The ACCC prefers that you submit your answers and other feedback online on our consultation hub at consultation.accc.gov.au.

Submissions can also be posted to:

Director
Standards and Policy
Consumer Product Safety Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

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