



NSW YOUNG LAWYERS **FACT SHEET**

# COSMETIC AND SCIENTIFIC TESTING ON ANIMALS

Up to 500,000 animals are used in cosmetic testing every year worldwide.<sup>1</sup>

As part of such tests, animals including mice, rabbits, guinea pigs and rats can have chemicals force-fed to them, dripped into their eyes or injected into their bodies.<sup>2</sup>

Many cosmetics available in Australia are produced by international companies that use animal testing for their products. These companies include: Procter & Gamble (who own Rexona, Dove and Pantene), Estee Lauder, Clinique, Maybelline, NARS, Bobbi Brown, Benefit, Make Up For Ever and O.P.I.<sup>3</sup>

However, cosmetic testing on animals in Australia is not currently undertaken.<sup>4</sup> In February 2019, the Federal Government introduced new legislation limiting animal testing for cosmetic purposes, which come under the *Industrial Chemicals Act 2019* (Cth).

## ***Industrial Chemicals Act 2019* (Cth)**

The law was introduced in response to public opposition to cosmetic testing on animals. According to the RSPCA, about 85% of Australians support outlawing cosmetic testing on animals.<sup>5</sup>

Under the *Industrial Chemicals Act 2019*, new chemicals introduced solely for cosmetics cannot rely on new animal test data gathered on, or after, July 2020.<sup>6</sup> Existing animal test data will be acceptable as a last resort, if it is crucial to protecting

human health and the environment.<sup>7</sup> The law excludes chemicals used for agricultural, veterinarian, therapeutic, or food-related purposes.<sup>8</sup>

Many chemicals used in cosmetics are also used for other purposes including for cleaning products, resulting in a potential loophole exposed by animal protection organisations Humane Society International and Humane Research Australia.<sup>9</sup> The new law does not apply to chemicals that can be used for other purposes, along with cosmetics. The animal protection organisations are concerned that companies planning to introduce a new chemical for cosmetics, could attempt to bypass the new law by submitting a new chemical application as 'multi-use', such as for cleaning products, together with cosmetics.<sup>10</sup>

## **Cosmetic Testing on Animals Overseas**

In China<sup>11</sup> and the United States there is nothing to stop using animals for cosmetic testing.<sup>12</sup>

Cosmetic animal testing has been banned in the European Union. This means that both the finished products and ingredients must not have been tested on animals, post 2009.<sup>13</sup> This prohibition was expanded in 2013, to include newly imported goods, effectively stopping European Union companies relying on tests done overseas.<sup>14</sup> Other countries that have since banned animal testing include India, Norway, New Zealand, South Korea, Taiwan, Turkey and Israel.

Alternatives to cosmetic testing on animals include in vitro techniques, which involve the use of human cells and tissues, computer-modelling and the use of human volunteers. These methods are touted to be cost effective, time efficient and require fewer resources than animal testing.<sup>15</sup>

## Animal Testing for Science and Research

About 12 million animals are used in animal testing for research and teaching purposes in Australia annually.<sup>16</sup> Native mammals and domestic fowls are the most commonly 'used' animals for research, with nearly 4 million of each used per year.<sup>17</sup> Mice, birds and fish are also commonly used. Each Australian state has its own legislation to regulate this practice. For decades, both regulation and the practice itself have been topics of considerable academic and judicial analysis.

Animal testing is used in Australian research and teaching for four primary purposes:<sup>18</sup>

1. *Biomedical research* – studying impacts on animals and their body parts to further understand potential results with humans.
2. *Medical research* - testing disease treatments on animals before humans.
3. *Agricultural research* – primarily aimed at improving productivity of livestock.
4. *Safety testing* – testing whether certain medicines and other products are safe for human use and to what extent.

Many techniques are used in this research, including dissection and xenotransplantation, which involves the transplanting of organs and tissue from one species to another.<sup>19</sup>

The efficacy of animal testing in predicting impacts on humans has long been questioned,<sup>20</sup> and in some cases it has been dangerously misleading.<sup>21</sup>

## Animal Research Act 1985 (NSW)

While most Australian states regulate animal testing for research purposes under their animal cruelty legislation, in New South Wales, it is governed under the *Animal Research Act 1985* (NSW).

Under the *Animal Research Act 1985*, it is an offence to undertake animal research without accreditation and an animal research authority, and to unlawfully supply animals for testing.<sup>22</sup> Penalties range from fines of up to \$17,600 to 12 months imprisonment, or a combination of a fine and imprisonment.<sup>23</sup>

## Australian Code for the Care and Use of Animals for Scientific Purposes

The Australian Code for the Care and Use of Animals for Scientific Purposes ('the Code') is a guide developed by the National Health and Medical Research Council for those involved in using animals for scientific research including

teachers, students, researchers, animal carers and institutions. The Code is established on principles of minimising harm, maintaining scientific integrity and only using animals when considered justifiable.<sup>24</sup>

The Code stipulates that the principles of Replacement, Reduction and Refinement ('the 3Rs') must be applied at all stages.<sup>25</sup> The 3Rs provide a framework for an ethical and 'humane' approach for using animals for research. 'Replacement' stipulates that techniques that replace or partly replace animals must be explored and implemented where possible.<sup>26</sup>

'Reduction' requires that the minimum number of animals necessary should be used in a project, but this should not result in greater harm to the animals used.<sup>27</sup> 'Refinement' provides that steps must be taken to protect and maintain animal wellbeing, with the effectiveness of techniques used continually reviewed throughout the activity.<sup>28</sup>

Under the Code, all activities must be reviewed, approved and monitored by an Animal Ethics Committee (AEC).<sup>29</sup> AECs must only approve projects deemed ethically acceptable under the Code.<sup>30</sup> AECs are also responsible for monitoring animals, including their housing conditions and care in facilities. Institutions generally host an established AEC, but projects can be reviewed by an external AEC, and institutions can share AECs.<sup>31</sup>

The Code includes guidelines on protecting and maintaining animal welfare, such as:<sup>32</sup>

- Ensuring sufficient food, water and shelter is provided;
- Ensuring the physiological and behavioural needs of animals are met;
- Living conditions and facilities must be checked daily;
- Isolation of animals that normally live in social groups must be avoided or minimised, unless approved by an AEC;
- Extended removal of water, food and social interaction must not be used to force an animal to alter their behaviour;
- Drugs such as anaesthetics and sedatives must be considered to relieve pain and suffering where necessary;
- The killing of animals must be 'humane', avoid prolonged pain and suffering and be in a clean and quiet space away from other animals;
- At the conclusion of projects, the rehoming of animals, return of animals to normal husbandry environments or the release of wildlife, should be considered where possible.

The Code does not guarantee best practice. Difficulty in maintaining transparency among research establishments, including in instances where care for animals' needs has been inadequate<sup>33</sup> or facilities have been unwilling to divulge information on the basis that they constitute trade secrets,<sup>34</sup> are significant issues that have been raised in Court.

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## Endnotes

- 1 Humane Society International Australia, *Cosmetics Animal Testing* (2019) Humane Society International Australia <<https://hsi.org.au/campaign/animal-welfare-5/cosmetics-animal>>.
- 2 Ibid.
- 3 For more information on which brands test on animals, visit PETA: <https://features.peta.org/cruelty-free-company-search/index.aspx>.
- 4 RSPCA, *Laws in Australia* (2019) RSPCA <<https://www.rspca.org.au/campaigns/makeover-world/laws-australia>>.
- 5 RSPCA, *Makeover the World* (2019) RSPCA <<https://www.rspca.org.au/campaigns/animal-testing-cosmetics>>.
- 6 *Industrial Chemicals Act 2019* (Cth) ss 103, 168.
- 7 The Department of Health, *Ban on the Use of Animal Test Data for Cosmetics* (29 July 2019) Australian Government Department of Health <<https://www1.health.gov.au/internet/main/publishing.nsf/Content/ban-cosmetic-testing-animals>>.
- 8 Ibid.
- 9 Be Cruelty-Free Australia, Submission No 15 to Senate Community Affairs Legislation Committee, *Inquiry into Industrial Chemicals Bill 2017 and related Bills*, 14 June 2017, 2.
- 10 Ibid.
- 11 Choose Cruelty Free, *What's the Story with China?* (2019) Choose Cruelty Free <<https://www.choosecrueltyfree.org.au/cruelty-free-china>>.
- 12 The Humane Society of the United States, *End Cosmetic Testing* (2019) The Humane Society of the United States <[www.humanesociety.org](http://www.humanesociety.org)>.
- 13 Clive Philips, *Australia will finally ban cosmetic testing on Animals* (6 June 2017) The Conversation <[www.theconversation.com/australia-will-finally-ban-cosmetic-testing-on-animals-78768](http://www.theconversation.com/australia-will-finally-ban-cosmetic-testing-on-animals-78768)>.
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- 15 Dhawale, Shashikant and Doke, Sonali, 'Alternatives to Animal Testing: A Review' (2015) 23 *Saudi Pharmaceutical Journal* 223- 229.
- 16 Humane Research Australia, *2016 Australian Statistics of Animal Use in Research & Teaching* (2019) Humane Research Australia <[www.humanersearch.org.au/statistics/statistics\\_2016](http://www.humanersearch.org.au/statistics/statistics_2016)>.
- 17 Ibid.
- 18 Animals Australia, *Animal Experimentation Fact Sheet* Animals Australia <[www.animalsaustralia.org/factsheets/animal-experimentation.php](http://www.animalsaustralia.org/factsheets/animal-experimentation.php)>.
- 19 Humane Research Australia, *Humane Research Campaign* Humane Research Australia <[www.humanersearch.org.au/campaigns/](http://www.humanersearch.org.au/campaigns/)>.
- 20 Humane Research Australia submission to the National Health and Medical Research Council, March 2016, *Alternatives to the Use of Animals for Scientific Purposes*.
- 21 Akhtar, Aysha, 'The Flaws and Human Harms of Animal Experimentation' (2015) 24 *Cambridge Quarterly of Healthcare Ethics* 407–419.
- 22 *Animal Research Act 1985* (NSW) pt 5.
- 23 Ibid.
- 24 National Health and Medical Research Council, *Australian Code for the Care and Use of Animals for Scientific Purposes – 8th Edition* (23 July 2013) Commonwealth of Australia <[www.nhmrc.gov.au/about-us/publications/australian-code-care-and-use-animals-scientific-purposes](http://www.nhmrc.gov.au/about-us/publications/australian-code-care-and-use-animals-scientific-purposes)>.
- 25 Ibid 11.
- 26 Ibid.
- 27 Ibid.
- 28 Ibid 12.
- 29 Ibid 19.
- 30 Ibid 25.
- 31 Ibid 15.
- 32 Ibid 52, 53, 60, 63, 66, 67.
- 33 As in *Australian Rickettsial Reference Laboratory Foundation v Director General, Department of Trade and Investment, Regional Infrastructure and Services* (NSW) [2013] NSWADT 226.
- 34 As in USA in *Mississippi State University and the LAMS Company v PETA* (No 2006 – CA – 02120 –SCT).

*This fact sheet has been prepared by the NSW Young Lawyers Animal Law Committee for information only and is not a substitute for legal advice. This information is up to date as at October 2019.*