

## EXPLANATORY STATEMENT

### *Consumer Goods (Cosmetics) Information Standard 2020*

#### Overview

The Minister for Housing and Assistant Treasurer (the Minister) has made the *Consumer Goods (Cosmetics) Information Standard 2020* (the **new information standard**), pursuant to section 134 of the Australian Consumer Law, which is Schedule 2 of the Competition and Consumer Act 2010 (Cth).

The Australian Government introduced the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* (the **repealed information standard**) to mandate information requirements for cosmetic products to address a market failure where consumers did not have ready access to information about ingredients contained in them. This information allows consumers to avoid known allergens and irritants, and to make value comparisons between products based on ingredients. This information is also important for health care professionals to facilitate patient diagnosis and provide appropriate treatment where a consumer suffers an adverse reaction from the use of a cosmetic product.

#### ***Hand sanitisers and COVID-19***

On 18 March 2020, the Australian Government declared the outbreak of COVID-19 to be a human biosecurity emergency in Australia. Since then, there has been heightened public interest in personal hygiene measures that can reduce the spread of COVID-19.

Hand sanitisers have been an essential component of the public strategy to improve personal hygiene practices, driven by government and medical recommendations to use hand sanitisers containing at least 60 per cent alcohol where soap and water is unavailable. The COVID-19 emergency has highlighted some deficiencies in the market for hand sanitisers and the regulatory framework that governs the supply of hand sanitisers regulated as cosmetic products.

Concerns were raised that some hand sanitisers did not contain sufficient amounts of alcohol to be effective, misrepresentations by suppliers about the amount of alcohol contained in products, and products not disclosing the amount of alcohol contained in them, which meant that consumers did not have sufficient information to choose products that would effectively combat COVID-19. There were additional concerns raised about injuries to children, including hospitalisations, from consumption of hand sanitiser.

Given the strong public interest and expert recommendations to use hand sanitisers to prevent the spread of COVID-19, it is critical consumers are provided with information to choose safe and effective hand sanitisers. The repealed information standard did not require hand sanitisers to disclose sufficient information to allow consumers to make an informed choice and to use them safely and effectively. To correct this an amendment was made to require hand sanitisers that rely on alcohol as the primary active ingredient to provide the alcohol content and warning information on the product's container.

#### **The repealed information standard**

The repealed information standard for cosmetics is the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*.

Under subsection 33(3) of the Acts Interpretation Act 1901 (Cth), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

## **The new information standard**

The purpose of this information standard is to provide clear and consistent information about the ingredients contained in cosmetic products so that consumers can make informed choices about the products they buy. The new information standard carries over all of the requirements of the repealed information standard and introduces new information requirements specifically for hand sanitiser.

Attachment A provides a detailed explanation of the new information standard.

The new information standard only regulates the requirement for information specifically set out in the standard. In Australia, individual ingredients of cosmetic products are assessed by the Department of Health's Australian Industrial Chemicals Introduction Scheme (AICIS) – formerly the National Industrial Chemicals Notification and Assessment Scheme (NICNAS).

### *Other government standards*

Cosmetic products regulated by this information standard may also need to comply with other government standards, including those established by:

- The [Poisons Standard](#)
- The [National Measurement Institute](#)
- [Safe Work Australia](#)
- The [Customs \(Prohibited Imports\) Regulations 1956](#)

## **Transitional arrangements**

The instrument provides a transitional period of 180 days beginning on the day the instrument commences. Cosmetics manufactured after 31 October 1993 and before the end of 180 days after the commencement of the instrument must meet the requirements of either:

- the *Consumer Goods (Cosmetics) Information Standard 2020*, or
- the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*.

Cosmetics manufactured after 180 days after the commencement of the instrument must meet the requirements of the *Consumer Goods (Cosmetics) Information Standard 2020*.

## **Consultation**

The ACCC consulted on an exposure draft instrument from 22 August to 4 September 2020. A total of 20 submissions were received from industry, consumer groups, suppliers, manufacturers, government and online platforms.

All stakeholders supported a requirement to display warnings, with one submission proposing that this should be achieved through industry self-regulation.

The majority of submissions (15) were supportive of a requirement to disclose alcohol content. One submission did not support the disclosure of alcohol content.

In addition, the Australian Industrial Chemical Introduction Scheme (AICIS), the Therapeutic Goods Administration (TGA), the National Measurement Institute (NMI) and the Department of Industry were consulted in the preparation of this Information Standard.

## **Disallowance**

This legislative instrument is not subject to disallowance due to section 44 of the Legislation Act 2003 (Cth).

**Commencement**

The legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

**Sunsetting**

This legislative instrument is not subject to sunsetting due to section 54 of the Legislation Act 2003 (Cth).

**Regulation impact assessment**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR reference ID 42540).

## ATTACHMENT A

### *Detailed explanation of the Information Standard's provisions*

#### **Part 1 – Preliminary**

##### Section 1 – Name

This section provides the title of the Information Standard: *Consumer Goods (Cosmetics) Information Standard 2020*.

##### Section 2 – Commencement

This section provides that the Information Standard commences on the day after it is registered on the Federal Register of Legislation.

##### Section 3 – Authority

This section provides that the Information Standard is made under section 134 of the Australian Consumer Law.

##### Section 4 – Schedules

This section provides the way in which the Information Standard may operate in conjunction with other instruments specified in the Information Standard.

##### Section 5 – Application

This section sets out the circumstances in which the information standard applies, and exemptions to it, including the types of products and circumstances to which the standard does or does not apply.

The information standard provides a definition of a “cosmetic product”.

The ACCC interprets cosmetic products to include, but not be limited to, the following:

##### *Face and nail*

- Products intended for application to the lips with SPF sunscreen that comply with the [\*Therapeutic Goods Act 1989\*](#)
- Nail care products
- Make-up such as mascara, eyeshadow, primer and bronzer
- Nail polish and varnish
- Tinted bases and foundation without SPF sunscreen, including liquids, pastes and powders
- Fake nails and adhesive for fake nails
- Make-up removers
- Products intended for application to the lips without SPF sunscreen
- Hydrating face masks

##### *Hair care and hairdressing*

- Anti-dandruff hair care products that comply with the [\*Therapeutic Goods Act 1989\*](#)
- Hair tints or bleaches
- Products for waving, straightening or fixing hair
- Hair-setting products such as lotions, creams, gels, sprays or oils
- Hair conditioning products
- Shampoo and hair-cleansing products
- Hairdressing products such as lotions and lacquers, brilliantines and hair tonic

#### *Oral and dental hygiene*

- Products for care of mouth or teeth
- Toothpaste and gel

#### *Perfumes*

- Perfumes and colognes
- Eau de toilette
- Eau de colognes
- Eau de parfum

#### *Personal hygiene*

- Deodorants
- Shaving products such as creams, foams, lotions or soaps
- After-bath or hygiene powders
- Toilet or deodorant soaps
- Bath or shower preparations such as salts, foams, gels or oils
- Depilatories
- Hand cleansers

#### *Skin care*

- Secondary sunscreen products that comply with the [Therapeutic Goods Act 1989](#)
- Anti-acne skin care products that comply with the [Therapeutic Goods Act 1989](#)
- Skin moisturisers without SPF sunscreen such as creams, lotions, gels and foams
- Products for tanning without the sun
- Skin whitening products
- Hand protective creams or barrier creams

#### *Children's products*

- Temporary tattoos
- Make-up designed or intended for play
- Face paints

The Information Standard does not apply to:

- Cosmetics supplied as free samples or testers
- Therapeutic goods within the meaning of the [Therapeutic Goods Act 1989](#)
- Cosmetics manufactured in Australia for export only.

However, such products can still be labelled according to the Information Standard voluntarily.

### **Section 6 – Definitions**

This section provides the definitions of certain terms used in the information standard, including new definitions for “alcohol” and “hand sanitiser”.

### **Part 2 – Information Standard**

#### **Section 7 – List of ingredients**

This section provides requirements for the order of ingredients in the ingredient list and how the ingredient list may be provided with cosmetic products.

The ingredients must be specifically identified and listed in descending order calculated by either mass or volume. The quantity or percentage of each ingredient does not need to be declared unless the product is classified as a hand sanitiser in accordance with section 11 of the information standard.

Alternatively, ingredients may be listed in the following way:

- all ingredients (except colour additives) present in concentrations greater than 1% shall be listed in descending order by volume or mass;
- followed by ingredients (except colour additives) present in concentrations of less than 1% in any order; and
- followed by colour additives, listed in any order.

Incidental ingredients do not need to be disclosed. They are ingredients which have no technical or functional effect in the cosmetic product and are present in a cosmetic at insignificant levels.

Fragrances and flavours are the only ingredients which may be generically identified as either “fragrance” or “flavour”, although the manufacturer may specifically identify the ingredients of the fragrances or flavours if desired.

Cosmetics that cannot display the ingredients list on the container or product because of its size, shape or nature are permitted to show the ingredients in another way that ensures a consumer can be informed about the ingredients in the product – for example, displayed on the shelf near where the product is sold, or in a pamphlet to accompany the product.

#### Section 8 – Form of ingredients list

This section requires the list of ingredients to be prominently shown, clearly visible and legible. This means that the ingredients list is able to be easily read by a person with normal vision.

The names of the ingredients in the list must be either their English names or their International Nomenclature Cosmetic Ingredient (INCI) names. There may also be a list of ingredients in another language.

The information standard requires that cosmetic products be labelled with a list of all ingredients on the container or, if not packed in a container, on the product itself. The information standard allows suppliers to provide the list of ingredients in other ways if the size, shape or nature of a cosmetic product or its container prevents the list of ingredients being declared on the container or the product.

Other ways to provide information to the consumer could include the use of leaflets, pamphlets, brochures, labels, manuals, swing-tags, display panels, posters or similar methods which are attached to, or provided with, or are prominently displayed alongside cosmetic products.

#### Section 9 – Confidentiality provisions

This section provides for the responsible Minister to grant an exemption or trade secret status for an ingredient.

The Minister may, on application, grant confidentiality status in relation to an ingredient if the Minister is satisfied that:

- revealing the name of the ingredient would prejudice a trade secret, and
- the ingredient in the product is unlikely to cause harm to the consumer.

If the ingredient confidentiality is granted, the ingredient can be shown as ‘other ingredient’ in the ingredient list.

## Section 10 – Review of decisions

This section provides that where the Minister refuses an application for ingredient confidentiality under section 9, the applicant may appeal against the decision to the Administrative Appeals Tribunal.

## Section 11 – Additional requirements for hand sanitisers

This section provides specific information requirements that must be applied to cosmetic hand sanitisers that contain alcohol as the primary active ingredient.

This section does not apply to:

- Hand sanitisers that are therapeutic goods within the meaning of the [Therapeutic Goods \(Excluded Goods\) Determination 2018](#)
- Hand sanitisers that are excluded goods for the purposes of that Act under the [Therapeutic Goods \(Excluded Goods – Hand Sanitisers\) Determination 2020](#).

### *Categories of hand sanitiser*

Hand sanitisers in Australia are regulated as either cosmetic products or therapeutic goods. The difference between therapeutic goods and cosmetics is not always clear. Suppliers should seek advice from the Australian Competition and Consumer Commission (ACCC) or the Therapeutic Goods Administration (TGA) if they are unsure whether their product is for cosmetic or therapeutic use.

Cosmetic hand sanitisers include hand sanitisers that contain only low-risk ingredients (i.e. does not contain an ingredient in Schedules 2, 3, 4 or 8 of the Poisons Information Standard), that do not make a specific therapeutic claim and that are not for use in a health care setting. General low-level claims of activity against bacteria are permitted, and are made by the majority of cosmetic grade hand sanitisers.

Hand sanitisers regulated as therapeutic goods are those which make a therapeutic claim and/or are intended for use in a clinical or hospital setting, and/or are for use in relation to procedures that present greater risk of infections or disease transmission, such as body piercing or tattooing. Typical therapeutic claims include claims that are made in relation to killing a specific organism or virus e.g. ‘kills E. coli’ or ‘eliminates COVID-19’. The information standard does not apply to these products as they are regulated by the TGA.

The table below presents some examples highlighting the differences between a therapeutic claim and a cosmetic claim:

<b>Efficacy claim</b>	<b>Regulated as</b>
Kills 99% of bacteria	Cosmetic
Anti-viral	Therapeutic
Anti-virus	Therapeutic
Virucidal	Therapeutic
Antibacterial	Cosmetic
Provides antibacterial protection	Therapeutic
Bacteriostatic	Therapeutic
Fights germs	Cosmetic
Kills 99% of germs	Cosmetic
Disinfectant	Therapeutic

### *Alcohol disclosure*

The amount of alcohol contained in the hand sanitiser is to be calculated and shown as a percentage, by volume per volume (v/v%). For example 80% Alcohol or Alcohol 80% v/v. The alcohol content must be displayed either in the list of ingredients or elsewhere on the container in a manner that is prominent and clearly legible.

### *Warnings*

The information standard makes provision for the container to include minimum warnings to the effect of those specified in the instrument. These warnings may be presented in any order, through text or via an alternative means, such as internationally recognised pictograms or symbols.

### Section 12 – Transitional provisions

The new information standard carries over all the requirements of the repealed information standard, and these continue to apply to cosmetic products manufactured in or imported into Australia, and intended to be used in Australia, after 31 October 1993.

The new information standard provides a transitional period of 180 days to accommodate the new requirements under section 11 (additional requirements for hand sanitisers). During the transitional period, cosmetics can comply with either:

- the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*, or
- the *Consumer Goods (Cosmetics) Information Standard 2020*.

Cosmetics manufactured after 180 days after the commencement of the instrument must meet the requirements of the *Consumer Goods (Cosmetics) Information Standard 2020*.

These transitional provisions allow cosmetic hand sanitisers that are manufactured according to the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* before or during the transition period, to be supplied throughout the transition period, and after it ends.

### **Schedule 1 – Repeals**

This schedule repeals the whole of the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*.