



Law Council  
OF AUSTRALIA

*Legal Practice Section*

26 February 2018

PFAS Standards Section  
Department of the Environment and Energy  
GPO Box 787  
CANBERRA ACT 2601

By email: [PFASstandards@environment.gov.au](mailto:PFASstandards@environment.gov.au)

Dear Sir/Madam

**Submission on Consultation on the Regulation Impact Statement for a national phase out of PFOS**

1. This submission has been prepared by the Australian Environmental and Planning Law Committee of the Law Council's Legal Practice Section (**the Committee**).<sup>1</sup> The Committee welcomes the opportunity to respond to the *National Phase out of PFOS: Regulation Impact Statement for consultation (RIS)* published by the Department of the Environment and Energy.

**Background**

2. Perfluorooctane sulfonate-related chemicals (**PFOS**) are used in Australian industries engaged in hard and decorative chromium plating, fire-fighting and medical imaging (including X-rays).
3. Evidence for PFOS risk to the environment and human health is continuously emerging and safe exposure levels of PFOS are unknown.
4. Although Australia is a signatory to the *Stockholm Convention on Persistent Organic Pollutants*, it has not yet ratified the 2009 amendment related to PFOS. However, in acknowledgement of the dangers of PFOS, most non-essential industrial uses of PFOS have already been phased out in Australia.
5. Considering the risks posed to the environment and human health, alongside the costs associated with continued PFOS use and appropriate waste management, the Committee supports the conclusion in the Regulation Impact Statement that there is a clear need for Federal regulation of this issue.

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<sup>1</sup> The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

#### **Option 4: Ratification and phase-out of non-essential uses**

6. The Committee recommends that the Australian Government adopt Option 4, as outlined in the RIS. That is, ratification of the 2009 Stockholm Convention PFOS amendments, and restricting the future use of PFOS to essential uses, such as X-ray photography.
7. The Committee considers that this option maximises protection for the environment and human health and would result in a 97 per cent reduction in Australian PFOS emissions.
8. Option 4 is also the least expensive option and most decisive action, effectively alleviating costs that would otherwise have been incurred by industry and government in developing, implementing and monitoring compliance with appropriate best practice PFOS waste management strategies.
9. Finally, phasing out PFOS for all but essential uses would give industry some certainty on the future of PFOS usage in Australia, and facilitate the immediate transition to alternative options for activities currently using PFOS.

#### **Phase-out implementation**

10. Section 51(xxxix) of the *Constitution* empowers the Federal government to ratify the Stockholm Convention amendments and enact responsive legislation to phase out PFOS.
11. One option suggested in the RIS to implement a phase-out is amending the *Product Stewardship Act 2011* (Cth). The Committee does not support this option, as the Product Stewardship Act 2011 is designed to implement waste reduction strategies, rather than restricting or prohibiting chemical use.
12. A further option is to amend the suite of existing Commonwealth and state legislation to implement the phase-out of PFOS. The Committee believes, while possible, such an approach could compromise the consistency of regulatory responses across all jurisdictions.
13. Instead, the Committee considers that the most desirable option is to enact legislation mirroring the approach adopted in the *Ozone Protection Act 1989* (Cth) to implement a ban on chlorofluorocarbons (**CFCs**) for all but essential uses, consistent with the Montreal Protocol.
14. Under a framework modelled on the *Ozone Protection Act 1989*, mandatory codes of practice for PFOS handling, use and recovery can be developed at a national level, to be implemented through State and Territory legislation. This would achieve consistency, certainty, and assist Australia in satisfying its international obligations under the Stockholm Convention.

## Contact

15. The Committee would welcome the opportunity to discuss the submission further. Please contact Jess Feehely, Chair, Australian Environmental and Planning Law Committee at [jess.feehely@edotas.org.au](mailto:jess.feehely@edotas.org.au) in the first instance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jonathan Smithers', with a long horizontal stroke extending to the right.

**Jonathan Smithers**  
**Chief Executive Officer**