

Options to Limit Consumer Exposure to Hazardous azo dyes

Submission to ACCC



**National Retail
Association**

Prepared by the National Retail Association

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About the submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

This membership base includes the majority of national retail chains, as well as independent retailers, franchisees and other service sector employers. Members are drawn from all sub-categories of retail including fashion, groceries, department stores, home wares, hardware, fast food, cafes and personal services like hairdressing and beauty.

The NRA has represented the interests of retailers and the broader service sector for almost 100 years. Its aim is to help Australian retail businesses grow.

NRA has consulted with its membership on this proposal, including the National Retail Technical Standards Committee (NRTSC).

The NRTSC is a retail industry committee of quality assurance and technical compliance specialists as well as other business owners and representatives, including from most of Australia's national and most prominent retail chains, who meet regularly to discuss the challenges of product safety and compliance. This is the only committee of its kind operating in the retail sector and its view should be considered to be representative of the retail industry in areas where it is qualified to comment. It was formed to address matters relating to:

- Current or changing standards and regulations applicable to consumer goods or retail merchandise
- Product safety and regulatory reviews and the development of industry positions in response to government or regulatory proposals for change.
- Formulation of product recall advice across relevant product categories
- Development of industry standards or codes of practice
- Compliance with codes, standards, and laws and regulations
- Harmonisation of state laws

Background

The Australian Competition and Consumer Commission (ACCC) has prepared a draft Regulation Impact Statement (RIS) to consider the options to limit consumer exposure to hazardous azo dyes in clothing, textiles and leather articles. Some azo dyes can break down and release potentially carcinogenic aromatic amines.

Stakeholder consultation was requested as an opportunity to shape the government policy decisions. All stakeholders – including consumers, medical professionals, advocates, industry associations, importers, wholesalers, manufacturers and suppliers were invited to make submissions on any issue canvassed in this draft RIS.

The ACCC also sought additional information to consider the benefits and costs associated with the options outlined below, and has posed specific questions in this draft RIS for that purpose.

Support for Options 1 and 2

Through its NRTSC, the NRA has canvassed its membership on the draft RIS and came to a broad agreement that the best option would be a combination of options one and two. Specifically self-regulation with additional ACCC monitoring, education and information.

Without any advance notice, without any specific regulations in place and no notice that any regulator in Australia was focusing on this issue, the first audit of the retail industry by the ACCC found 97% compliance. The NRA submits that this level of compliance is relatively positive, particularly without self-regulation or any supporting education or awareness.

When compared to many other areas of business compliance, such as well-established areas like employment law and workplace health and safety, where recent audits by regulators have found significantly higher levels of non-compliance¹². The response of the retail industry was both swift and appropriate working with the regulators under the existing model established. This suggests that there continues to be a relatively high level of ongoing compliance, and supports the view that only incremental and light-handed steps should be taken at this stage in order to move compliance levels as close as possible towards 100%

Since the recent ACCC actions over the past 12 months retailers have already taken steps to improve their testing regimes to accommodate recent regulatory actions, which will have also raised the compliance level further. The only limiting factors now in achieving better compliance are the information gap faced by the retail industry around regulatory expectations and the broader challenge of education in the small business sector, which is why we support an approach that includes option 2 in a combination with option 1.

¹ In 2013-2014, a campaign was launched by the Fair Work Ombudsman assessing compliance throughout various industries to ensure that employers and employees understood their obligations in the workplace. 4,567 workplace audits were completed resulting in over \$4 million recoverable to 7,541 employees.

² A recent compliance audit conducted on small retailers by the WorkCover Compliance and Education section on different industries to ensure employers have valid Workers Compensation Policies. In this case they visited 132 small retailers and found that 37% did not have policies and that 90% of these claimed they did not know they had to have a Workers Compensation Policy.

Rejecting Specific Regulation

Regulation does not and cannot guarantee full compliance, and instead may only impose an excessively heavy burden to address what has already been measured as a relatively small level of non-compliance in a previously unregulated environment. It would equate to using a sledgehammer to crack a walnut. As we need incremental improvement in the compliance rate, self-regulation and education would seem an appropriate and proportionate response. Especially noting that a number of major retailers have already adopted additional initiatives to include azo-dyes testing as part of their testing protocols.

1. Red Tape

The Australian Government has a plan to cut a net \$1 billion in red tape every year. As part of that plan, there will be two parliamentary repeal days every year to cut unnecessary and costly legislation and regulation.

Adding additional regulation would counteract the government's objectives to minimise red tape for Australian businesses and should only be approached as a last resort.

2. Challenges of regulation

Regulating this topic specifically, at this time, raises a number of unique challenges which would have to be overcome by the ACCC. The challenge of creating a mandatory standard that would have to take a risk-based approach rather than a strict legal compliance approach -unlike the existence of a safety label or warning label, which can be measured in a black and white binary sense, compliance in this space has to be recognised that the risks exist on a variable scale and that even garments from the same production line and batch will record different results.

This is the first of potentially many areas of 'new' compliance in the space of chemicals in products. Whichever approach is taken to azo dyes will possibly need to be taken following every future area of chemical risk identified by NICNAS in following years. If that is the future, it would be better to take a broader approach to regulating all of these substances, one which captures all current and future items on the "Restricted Substances List" consistently. For example: why is this approach different to the testing for formaldehydes?

There is also the specific challenge of defining certain aspects of this topic appropriately. The ACCC in any regulation would be obligated to provide definitions or guidance on the following key questions:

- What is "direct and prolonged contact"?
- What is "fit for proper purpose"?
- Which items or elements of a product would need to be tested?

Although many major retailers and suppliers have procedures in place, should the regulatory approach be adopted by the ACCC, we submit that depending on the final scope and requirements that would be mandated, a phase in period should be implemented. We submit that a 12 month phase in period would be required for a mandated option, which would be in line with other regulatory changes in the product safety space.

3. Costs

The RIS states that additional costs would decline over a 10 year period, however the compliance and testing costs would remain constant as the number of tests conducted on products per year. Further this costs imposed by the testing laboratories would most likely increase over the same 10 year period, at least in line with inflation.

Costs may become prohibitive if specific regulations are provided, especially if definitions are vague, ambiguous and poorly thought through. The difference between good guidance and poor information from the regulator is millions of dollars of spending by industry on poorly directed and unnecessary testing regimes.

Below are four examples provided to the NRA by members, of the costs associated with the azo dye regulation? Please note that while the information has have been de-identified, the NRA is happy to discuss aspects of these cases further with the ACCC if required.

Cost examples from retailers

Retailer 1

- *Retailer 1 has approximately 23,000 test reports submitted each year for apparel products. (Note: An average of 2 colours per test report)*
- *Currently, denim product are designated as their high risk azo dye products.*
- *Just under 2% of all tests are for denim, and include azo dye testing.*
- *Since testing was introduced as a standard procedure for their new denim products (subsequent to ACCC testing) there have been no test results where the 30ppm limit has been exceeded.*
- *The Approximate cost for azo dye testing is \$40 USD per colour.*
- *At 2% denim and 2 colours per style, annual increased costs for testing are approximately \$37,000 USD*
- *If the ACCC definitions for “direct and prolonged contact” do not allow them to recognise and isolate what is high risk in the eyes of the ACCC, then incremental testing costs could be exorbitant. Note table below.*
- *Believes that it would not seem practical or cost effective to extend the coverage of azo dye testing to this broadest extent. However, if a regulated approach is adopted and the parameters surrounding what is captured is not clear, then an escalated level of testing is likely to be required.*

% of test reports requiring azo dye testing	Incremental testing costs USD	Incremental testing costs AUD (at .75)
5%	+ \$92,000 p.a.	+ \$123,000 p.a.
10%	+ \$184,000 p.a.	+ \$245,000 p.a.
20%	+ \$368,000 p.a.	+ \$490,000 p.a.
50%	+ \$920,000 p.a.	+ \$1,230,000 p.a.
100%	+1,840,000 p.a.	+ \$2,450,000 p.a.

Retailer 2

Retailer 2’s testing cost for AZO is approximately US\$36 per test (per colour / per fibre / per component) which is a special discounted rate charged by the test labs. For example, a t-shirt in one colourway with 3 components (body fabric, neck rib and print) would have an approximate test cost of US\$108. The extra cost would see an increase in the final cost of the product for the consumer.

Retailer 3

As a national retailer, additional testing for chemicals would be minimal. Our orders are approx. 4000 units on average per order and depending on the garment, fibre content and end use the costs vary considerably for testing but would be somewhere between \$40 - \$200 so from below 1c to about 5c per garment. The retailer would also test fabric groups and not every style. So if a fabric was used across five different styles they would only test that fabric once and not for each style which would again dilute the costs. This retailer is fine with current testing methods, so long as sufficient guidance is provided to allow one test on a single component.

Retailer 4

Retailer 4 believed it would be difficult to quantify the cost incurred if the regulatory option was adopted by the ACCC. The retailer has a significant amount of product which would fall into the scope of testing for azo dyes (approximately 55 million units per year). If 75% of these units fell within the scope of testing regimes, then the testing costs at approximately \$0.09 per unit would total the increase cost of these garments would be a minimum of \$3,712,500 per annum. This cost does not include the extra costs of managing compliance and staff costs which would an additional increase cost of the product and would ultimately be passed onto the consumer. Such additional staff costs for managing compliance, administration and reporting, could increase the average price increase to approximately \$0.12 per unit.

4. Potential Product Delay

If testing regimes are too onerous or poorly directed it may in some cases delay the release of fashion products to the market, to the greater detriment of Australian consumers. This would most likely be the case for when supply chain delays are encountered, which in the fast fashion industry can be a critical competitive disadvantage.

Additional education and information should be provided

Government agencies should understand the limitations around their capacity to engage with business, especially in an unregulated and unlicensed sector of the economy dominated by small, independent family businesses.

Proactive communication with industry is key to compliance here. A partnership with industry associations remains the best way for regulators in many circumstances to educate the small business sector.

In terms of industry's need for better definitions and guidance on what the regulator considers higher risk and important, this is so that limited resources can go towards testing and complicate measures in the more critical spaces. A very clear scope and specific guidelines on the requirements and product types that require testing should be provided. This would ensure that all products across retailers and test labs are tested equally and can be compared like for like.

Any option implemented would need to provide a very clear scope and specific guidelines on the requirements and product types that require testing. This would ensure all products across retailers and testing laboratories are tested equally.

In order for additional education to be successful, the ACCC would need to provide the following as a guidance for testing high risk areas:

a. Definition of “direct and prolonged contact”

A clear definition of ‘direct and prolonged contact’ must be given as well as does the size of the area which has direct and prolonged contact make a difference to the risk? To ensure that all retailers and supplies, regardless of size, are equally informed and operating to a level playing field across the supply chain and retail industries, more education and information should be provided to eliminate any ambiguity.

b. Definition of “fit for proper purpose”

Like the definition for ‘direct and prolonged contact’, the ‘fit for proper purpose question’ needs to be asked and given parameters by the ACCC to better assist retailers and supplies when testing various products.

c. Applying the established regulations be applied to certain examples

One of the major concerns that retailers and suppliers are having is knowing what the regulator will be targeting given there is no structured definition to “direct and prolonged contact”, nor “fit for proper purpose”. Feedback that the NRTSC has collected is how the established regulations will be applied to the following:

- Belts;
- Handbags- would testing only be required on the strap or handle?;
- Lining of a constructed jacket;
- Bed linens;
- Watch bands;
- Cushion fabric;
- Pocket bag lining which sits directly against the skin;
- The base of a port-a-cot;
- Car seat covers;
- Children’s car seats;
- School bag and back packs- would testing only be required on the strap or handle, or perhaps the back panel of the back pack also?;
- An applique stitched to the outside of the garment;
- A plush toy as it is held and mouthed by young children;
- Stitching Cotton;

d. The Government should to provide, in one place, the full list of chemicals of concern that industry and suppliers should be looking out for.

It would take an individual business approximately eight hours to sort through the existing disparate reports and recommendations to figure out what is important and what is not.

The NRA submit that if there were to be any changes made to this list, that it should only be made following proper consultation with the affected industry and with appropriate transition time.

It should be noted that very different types of information and communication strategies are required depending on whether the intended audience is suppliers, the retail industry, or consumers.

We note the difficult challenges of explaining health risk scales to consumers generally and commend the ACCC's efforts thus far around the azo dyes issue. It is for this reason that we do not however support option 4, given the challenges mentioned above.

Conclusion

With any of these options, more education would be required to ensure that all retailers and suppliers, regardless of size, are equally informed and operating to a level playing field across the supply chain and retail industries.

There have been no cases or reports of health issues arising from wearable apparel with azo-dyes, which is acknowledged by the ACCC within the RIS. Given the absence of incidents and cases, as well as the low level of compliance in an unregulated environment, that the status quo, along with continued surveys by the ACCC and additional education be the chosen solutions moving forward. Please note that this does not dismiss the science that sits behind azo-dyes and the point made within the RIS about the cumulative risk of cancer and the need for limiting exposure as a part of an overall risk mitigation approach, however maybe it does raise the question of whether regulation is required.

Contact information

National Retail Association
Trevor Evans
Chief Executive Officer
1800 738 245
t.evans@nra.net.au