



**Australian  
Competition &  
Consumer  
Commission**

GPO Box 3131  
Canberra ACT 2601

23 Marcus Clarke Street  
Canberra ACT 2601

tel: (02) 6243 1111  
fax: (02) 6243 1199

[www.accc.gov.au](http://www.accc.gov.au)

# **Review of the Consumer Product Safety Standard for Protective Helmets for Motor Cyclists**

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### Disclaimer

The Australian Competition & Consumer Commission (ACCC) has developed this consultation paper to seek the views of key Australian stakeholders about the proposed changes to the mandatory standard for motorcycle helmets (this includes Commonwealth, State/Territory government agencies, NGOs and industry stakeholders).

The ACCC will consider all feedback provided in response to this consultation in developing its recommendation to the Minister. The ACCC has not yet formed its view in relation to the review of the mandatory standard for motorcycle helmets.

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# 1. Purpose

The purpose of this paper is to consult with stakeholders on the current consumer product safety standard for the supply of motorcycle helmets in Australia.

This paper seeks relevant information and views from interested parties that will assist in determining the optimal approach for the future regulation of motorcycle helmets under the *Competition and Consumer Act 2010* (CCA). Of particular interest is any factual information, which will assist in assessing the potential impacts and benefits of each of the regulatory options. Stakeholders should also indicate which of the regulatory options they support and provide their rationale and any evidence that supports their views.

Based on the options proposed in this consultation paper, the Office of Best Practice Regulation has advised the Australian Competition and Consumer Commission (ACCC) that a Regulation Impact Statement may not be required.

**The consultation process outlined in this paper may therefore be the only opportunity for stakeholders to provide their input into the review process and all interested parties are encouraged to make submissions on the options or other issues relevant to the review even if they agree with the preferred option set out below.**

# 2. Background

## **The current mandatory safety standard**

The current mandatory consumer product safety standard for the supply of protective helmets for motor cyclists (the current mandatory standard) was published in the Commonwealth Gazette on 19 December 1990 as Consumer Protection Notice No. 9 of 1990. Consumer Protection Notice No. 9 of 1990 declares the current mandatory standard to be *Australian Standard AS 1698–1988 Protective Helmets for Vehicle Users* (the 1988 version of the Australian Standard) published by the Standards Association of Australia on 9 May 1988. The current mandatory standard makes minor variations to the 1988 version of the Australian Standard.

The current mandatory standard was made under the provisions of the *Trade Practices Act 1974* (the TPA). The Australian Consumer Law (ACL), which is Schedule 2 to the CCA took effect on 1 January 2011. Mandatory consumer product safety standards made under the TPA, such as the current mandatory standard for motorcycle helmets, continued in force as if they had been made under the ACL.

The current mandatory standard is a legislative instrument and is registered on the Federal Register of Legislative Instruments (FRLI).<sup>1</sup>

Australian Standard AS 1698 and the New Zealand standard for protective helmets (NZS 5430:1992) were jointly revised and designated as *AS/NZS 1698:2006 Protective helmets for vehicle users* (the 2006 version of the Australian/New Zealand Standard) in February 2006. Three amendments have been made to the 2006 version of the Australian/New Zealand Standard since it was first published, the most recent in December 2011.

The key performance requirements for the 2006 version of the Australian/New Zealand Standard and the 1988 version of the Australian Standard are very similar. The 2006 version does include some additional safety requirements including an additional performance requirement for helmet stability.

Given the changes to the Australian Standard since 1988 and the sunset provisions in the *Legislative Instruments Act 2003* (LIA) outlined below, the ACCC is reviewing the current mandatory standard now.

### **Introduction of the mandatory standard**

By the early 1970s it was compulsory for motorcycle riders and pillioners to wear a helmet. The type of helmet required to be worn was one which claimed to comply with a recognised standard.<sup>2</sup> At the time, there were differences in the protection offered by helmets and there were instances where helmets included forged markings indicating compliance with a standard.<sup>3</sup>

When Australian Standard AS 1698 was first published in 1974, action was taken to address these issues. State legislation, calling up AS 1698 was introduced under road traffic acts and/or consumer protection laws in most, but not all jurisdictions in Australia. In 1975, Commonwealth Customs regulations prevented the importation of helmets which did not comply with AS 1698.

During this time, Commonwealth regulation of the supply of motorcycle helmets, via the provisions of the TPA was considered.<sup>4</sup> Commonwealth regulation would mean that helmets supplied anywhere in Australia had to meet minimum safety requirements, as set out in AS 1698. At the time, the mandatory standard was introduced it was felt it was necessary to close the regulatory gap in the various laws by establishing a baseline of safety for the supply of motorcycle helmets.

The mandatory standard was first made on 10 November 1978 by the Minister of State for Justice and Consumer Affairs and was published in the Commonwealth

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<sup>1</sup> Available: <http://www.comlaw.gov.au/Details/F2005B01097>.

<sup>2</sup> Report from the House of Representatives Standing Committee on Road Safety, 1978, *Motorcycle and Bicycle Safety* p.68. available: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=reports/1978/1978\\_pp162report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=reports/1978/1978_pp162report.htm)

<sup>3</sup> *ibid.*, p.68.

<sup>4</sup> *ibid.*, pp. 67-68.

Gazette on 14 November 1978.<sup>5</sup> The mandatory standard required compliance with the voluntary Australian Standard AS 1698-1974.

### **The 2006 version of the Australian/New Zealand Standard**

The 2006 version of the Australian/New Zealand Standard includes a number of changes to the 1988 version. The majority are relatively minor but a small number are more significant. Changes, included in the 2006 version of the Australian/New Zealand Standard include:

- The removal of the requirement for a helmet to have a shell with a hard outer surface – the requirement for the helmet to be capable of a) resisting penetration; b) absorbing impact energy; and c) being retained on the head, was retained.
- Modification of the requirements for internal projections.
- Addition of a provision for external non-rigid projections.
- Addition of a requirement for ventilation.
- An increase in the number of helmets to be provided for testing purposes.
- A new section specifying headform sizes for testing purposes.
- Addition of a dynamic test for helmet stability.
- A change to the test sequence to allow for the new dynamic stability test and clarification on when conditioning is to be performed.
- Specification of minimum letter sizes for both the marking of helmets and the brochure or label which sets out the instructions for care and use of helmets.
- Revision of the marking requirements in relation to a helmet which has received a severe blow.
- Addition to the marking requirements that visors attached to the helmet meet the requirements of Australian Standard AS 1609.
- That the suitability of communications devices be specified.
- Changes to the warning requirements regarding painting of helmets and use of solvents.
- Lowering of the test line (as set out in Australian Standard AS 2512.1).

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<sup>5</sup> Report of the House of Representatives Standing Committee on Road Safety, 1984, *Interim report on the motorcycle and bicycle helmet safety inquiry*, Appendix 7, p. 37 available: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bycomlist.asp?id=197](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bycomlist.asp?id=197)

While published in February 2006, this version of the standard has been amended three times since 2006.

### **The *Legislative Instruments Act 2003***

The object of the LIA is to provide a regime for the management of Commonwealth legislative instruments by, amongst other things, encouraging rule-makers to undertake consultation, encouraging high drafting standards to promote legal effectiveness and establishing mechanisms to ensure legislative instruments are periodically reviewed.

This consultation paper has been prepared to meet the consultation requirements of section 17 of the LIA.

Section 14 of the LIA prevents a Commonwealth legislative instrument made under section 105 of the ACL from referencing an Australian Standard as amended from time to time. A mandatory safety standard for the supply of motorcycle helmets can only incorporate an Australian Standard in the form that exists as at the date of incorporation.

As a legislative instrument, the current mandatory standard is subject to the sunset provisions set out in the LIA. Under the LIA, the current mandatory standard will be automatically repealed on 1 October 2015 unless it is either remade or revoked before this date.

### **International regulation and standards**

The ACCC understands that in addition to the 2006 version of the Australian/New Zealand Standard, the following international standards have also been developed for protective helmets for vehicle users and/or motorcyclists:

- European regulation/standard - UN/ECE Regulation No. 22 Revision 4: Uniform provisions concerning the approval of Protective helmets and their visors for drivers and passengers of Motor Cycles and Mopeds.
- United States of America standard – DOT571.218 Standard No. 218.
- Japanese standard – JIS T 8133 Protective helmets for motor vehicle users.
- United States of America standard - Snell M2005 Standard for protective headgear for use with motorcycles and other motorized vehicles.
- United States of America standard - Snell M2010 Standard for protective headgear for use with motorcycles and other motorized vehicles.

There are both subtle and substantial differences between all these international standards but all assess impact energy attenuation, retention strength and helmet

stability.<sup>6</sup> Based on initial research, it appears some standards may be more suitable for helmets likely to be involved in high speed accidents such as during racing and others more suitable for medium speed accidents.

Helmets that are compliant with these standards may not currently be sold and worn in Australia unless they are also compliant with the Australian Standard and road use laws.

## Death and injury data

Motorcycles account for 4.5 per cent of all passenger vehicle registrations in Australia and 0.9 per cent of vehicle kilometres travelled, but motorcyclists account for approximately 15 per cent of all road crash fatalities and an even higher proportion of serious injuries.<sup>7</sup> Motorcyclists are significantly more vulnerable than car occupants and are approximately 30 times more likely to be killed than car drivers, based on deaths per kilometres travelled.<sup>8</sup>

In the ten-year period from 1998 to 2007, an average of 208 motorcyclists were killed on Australia's roads each year.<sup>9</sup> In the five-year period from 2000 to 2004, an average of approximately 5000 motorcyclists were seriously injured each year.<sup>10,11</sup>

Based on Coroner's findings, in the period 2001 to 2003, 30 per cent of motorcyclist's fatal injuries were to the head and 21 per cent were to multiple areas of the body.<sup>12</sup> While a helmet cannot prevent all death and head injury to motorcyclists, it is critical that helmets provide the level of protection intended by the experts who design them and expected by the consumers who use them. In addition to the personal trauma following a serious permanent head injury, there are also costs incurred by the community, such as medical, rehabilitation and ongoing care costs over the lifetime of the injured person.

In order to minimise the incidence of death and serious injury caused by motorcycle accidents it is important that motorcycle helmets meet the prescribed safety standards and perform as claimed.

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<sup>6</sup> McIntosh, A., 2011, *Report on a Comparison of Motorcycle Helmets Standards*, commercial-in-confidence, 8 September 2011, p .39.

<sup>7</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008, *Fatal and serious road crashes involving motorcyclists*, April 2008, p. 1, available: <http://www.infrastructure.gov.au/roads/safety/publications/2008/pdf/mono20.pdf>.

<sup>8</sup> *ibid.*, table 6, p. 6.

<sup>9</sup> *ibid.*, table 1, p. 2.

<sup>10</sup> *ibid.*, table 10, p. 9.

<sup>11</sup> A serious injury was defined as an injury which results in the person being admitted to hospital and subsequently being discharged alive either on the same day or after one or more nights stay in a hospital bed (i.e. deaths are excluded).

<sup>12</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008, *Fatal and serious road crashes involving motorcyclists*, April 2008, table 33, p. 24, available: <http://www.infrastructure.gov.au/roads/safety/publications/2008/pdf/mono20.pdf>.

### **3. The Australian Consumer Law**

The ACL is a single, national law covering consumer protection and fair trading which applies in the same way nationally and in each state and territory of Australia. The ACL includes a number of provisions which are particularly relevant to consider as part of this review as they may be used by Fair Trading agencies in conjunction with road use laws and in the absence of a mandatory standard. This is discussed further below.

Section 18 of the ACL is one of a number of provisions which provides general protection to consumers. It states that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Section 29 of the ACL is a provision which provides a specific protection to consumers against false or misleading representations about goods.

Together, these two sections mean that a supplier must not engage in conduct that is false, misleading or deceptive or likely to be so. A representation by a supplier that a motorcycle helmet meets a particular standard may be proved to be a breach of one or both these provisions.

Section 54 of the ACL provides for consumer guarantees that goods are of acceptable quality including that they are free from defects and safe. Section 55 provides consumer guarantees that goods are reasonably fit for any disclosed purpose. These provisions are relevant in that motorcycle helmets must be free from defects, safe and reasonably fit for any purpose. A motorcyclist purchasing a motorcycle helmet will be doing so for a variety of reasons including, to comply with state and territory 'use' laws (see discussion below) and to protect them in the event of an accident.

The ACL provides for consumers to take action against suppliers and in some cases manufacturers for a breach of consumer guarantee provisions. Section 277 provides for the regulator to take action on behalf of consumers.

Section 122 of the ACL provides for the compulsory recall of consumer goods which will or may cause injury to any person. In the majority of cases where unsafe goods are identified, the ACCC and the supplier of the goods negotiate a voluntary recall. However, the option to use powers in the ACL to compulsorily recall unsafe goods is also available.

### **4. The Australian consumer product safety system**

Section 105 (1) of the ACL allows the Commonwealth Minister to declare an Australian Standard either in whole or part, with additions or variations, to be a safety



standard for consumer goods. Section 104 of the ACL allows the Commonwealth Minister to make a safety standard for consumer goods which sets out requirements for those consumer goods which are reasonably necessary to prevent or reduce the risk of injury to any person. Safety standards made under the ACL are co-operatively enforced by the ACCC and state and territory fair trading agencies.

Section 106 of the ACL states that a person must not in trade or commerce, supply, offer for supply or manufacture for supply, consumer goods of a particular kind if those goods do not comply with a safety standard currently in force for those goods.

A safety standard for motorcycle helmets regulates the *supply* of motorcycle helmets. The term 'supply' in relation to consumer goods (such as motorcycle helmets) means to supply by way of sale, exchange, lease, hire or hire-purchase.

## 5. Motorcycle helmet 'supply' and 'use' laws

While the ACCC can develop and enforce laws for the *supply* of motorcycle helmets it is not in a position to make and amend laws which govern which helmets can be legally worn by motorcyclists. That responsibility falls to state and territory road safety agencies.

State and territory road and traffic agency Ministers make legislation in relation to motorcycle helmet *use*. Each state and territory requires that motorcyclists and their passengers wear an approved motorcycle helmet while riding a motorcycle on public roads. Each jurisdiction then defines an approved motorcycle helmet. Use laws are enforced by Police in each state and territory.

Use laws vary between states and territories. At least one jurisdiction requires that an approved helmet comply with the 1988 version of the Australian Standard. Other jurisdictions require compliance with the 2006 version of the Australian/New Zealand Standard and at least two of these jurisdictions require that helmets manufactured after a certain date have an identifying mark indicating compliance with the standard, from a Joint Accreditation System of Australia and New Zealand (JAS-ANZ) accredited or approved certification body. The Commonwealth is not in a position to rectify these inconsistencies and the options available to the Commonwealth during the review, will not result in state and territory use law consistency.

The Joint Accreditation System of Australia and New Zealand is the government-appointed accreditation body for Australia and New Zealand responsible for providing accreditation of conformity assessment bodies (CABs) in the fields of certification and inspection. On its website, JAS-ANZ states, accreditation by JAS-ANZ demonstrates the competence and independence of accredited CABs.<sup>13</sup>

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<sup>13</sup> See JAS-ANZ website for more details - <http://www.jas-anz.com.au/>

Certification confirms an organisation's (including a manufacturer's or importer's) ability to be compliant with specific requirements of a particular standard.

The regulatory impact analysis process to be followed to review a mandatory safety standard means reviews often take considerable time to complete and therefore create an environment where the supply and use laws can get out of step. There is an obvious tension created by maintaining supply laws which are in conflict with road use laws.

While the ACCC understands that helmets that comply with the 2006 version of the Australian/New Zealand Standard would meet or exceed the key safety requirements of the 1988 standard it is none the less confusing and frustrating for suppliers to be in the position where they are technically breaking one law in order to comply with another. For example, while the current mandatory standard requires compliance with the 1988 version of the Australian Standard, a number of state and territory use laws require that new helmets comply with the 2006 version. If suppliers comply with the mandatory standard, they may not be supplying helmets which are fit for purpose (i.e. able to be legally used by motorcyclists). On the other hand, as supply and use laws currently stand, if helmets meet use laws and are therefore fit for purpose, they may not comply with the mandatory standard. These issues arise under circumstances where, as noted earlier, the difference between the two versions of the standards is not significant.

An opportunity for supply and use laws to become 'out of step' arises every time the Australian/New Zealand Standard is reviewed. For example, the 2006 version of the Australian/New Zealand Standard has been amended three times since it was published in February 2006 and each amendment creates an environment for supply and use laws to be further out of step with each other. Conflicting supply and use laws hinder the ACCC's regulatory effort and complicate the option for enforcement action.

## **6. Review of the mandatory consumer safety standard**

There are three options available for consideration during the review. Each of these are discussed in turn below.

The potential option of maintaining the status quo (i.e. remake the mandatory safety standard in its current form) is not considered viable and is therefore not discussed below. The 1988 version of the Australian Standard was superseded in 2006 and the majority of state and territory use laws reference the 2006 version of the Australian/New Zealand Standard. Further, testing to the 1988 standard requires the

use of different headforms<sup>14</sup> to the ones used in the more recent 2006 standard. The accredited test facilities in Australia are now only set up to test to the 2006 version of the Australian/New Zealand standard.

These options are intended to address the out of date Commonwealth mandatory consumer product safety standard and will not resolve inconsistencies between state and territory use laws.

**Option 1: Repeal the current mandatory safety standard for the supply of motorcycle helmets and rely on other provisions of the Australian Consumer Law in conjunction with road use laws to ensure that safe helmets are supplied**

This option would remove the potential for a conflict of laws arising when supply and use laws are not in sync or are out of step and still provide for the supply of safe helmets via use of the existing provisions of the ACL.

Over regulation creates inefficiencies and additional costs for Government, business and consumers. These include costs for development and maintenance of regulation (including keeping them up to date) and compliance costs for both Government and industry. It is likely these costs will be borne by consumers and in some circumstances may lead to a reduction in the product range and therefore a reduction in competition. However, when industry self-regulation and an environment of no regulation result in the risk of death or serious injury, regulation is an important and necessary alternative.

At the time the mandatory standard was introduced, it plugged a gap in the regulation of motorcycle helmets which no longer exists. Now every state and territory has mandated use laws which require motorcyclists to wear helmets which comply with the Australian Standard or the Australian/New Zealand Standard (and not just a 'recognised' standard) and those laws are enforced by the police. It therefore appears that the Commonwealth's supply standard is now redundant and may be counterproductive as it can be in direct conflict with the current use laws for helmets.

Removal of the contradictory supply standard would improve the ACCC's ability to ensure motorcycle helmets are fit for purpose and meet the standards prescribed through the current use laws. The ACCC would still regulate the supply of helmets through the use of other general provisions in the ACL which would support the prevailing road use laws requiring that helmets meet the Australian/New Zealand Standard and that a sticker or marking indicating compliance with the Standard be affixed to the helmet.

Under this option suppliers are still required to comply with the general provisions of the ACL, such as those that deal with liability, misleading and deceptive conduct and

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<sup>14</sup> Some of the key performance requirements require a helmet to be fitted onto a headform during testing. Headforms are similar to a human head. The type of headform required under the 2006 Australia/New Zealand standard is different to that required in the 1988 version of the Australian Standard.

false or misleading representations that goods are of a particular standard. If motorcycle helmet suppliers represent that their goods meet a particular standard (such as AS/NZS 1698), those assertions must be truthful and suppliers have an obligation to ensure that is the case. This provides a statutory hook for the ACCC to test any helmets which claim compliance with the relevant Australian Standard. Non-compliance with the Australian Standard would be seen as a serious safety issue which may result in unsafe helmets being recalled and breaches of the ACL being pursued by the ACCC.

Additionally, the consumer guarantees provisions of the ACL require that goods be of an acceptable quality including that they be; fit for purpose, free from defects and safe. Any consumer buying a motorcycle helmet in Australia would be entitled to expect that the helmet was able to be legally used for its intended purpose and that it performed as represented. Consumers can take action against suppliers of products under these provisions of the ACL.

As noted above, overlapping and inconsistent supply and use laws create inefficiency and therefore increased costs for governments and consumers. In the absence of a mandatory supply standard motorcyclists are still afforded the same level of protection, via the combination of general provisions of the ACL and the use laws administered by states and territories which require a sticker or mark indicating compliance with a particular standard.

Under this option, while the ACCC would not administer a mandatory standard for the supply of helmets, it can still effectively ensure the supply of safe helmets by testing to the Australian/New Zealand Standard and taking action on non-compliance as the following example demonstrates.

### **Recent testing of motorcycle helmets**

In March 2013, the ACCC purchased a number of motorcycle helmets and tested them to the key requirements of the 2006 version of the Australian/New Zealand Standard (i.e. not the current mandatory standard based on the 1988 version of the Australian Standard). The helmets tested included markings which indicated they were certified to and complied with the 2006 version of the Australian/New Zealand Standard.

Test results confirmed that four of the six brands of helmets met the key safety requirements of the standard. The remaining two brands of helmet failed testing and the ACCC negotiated a recall of the failed helmets (in the event a supplier fails to voluntarily recall unsafe products, products may be compulsorily recalled). A third brand of helmet has been recalled as a result of the investigation conducted following testing.

The testing and subsequent action demonstrates that the ACCC is able to regulate the supply of motorcycle helmets and take action to remove unsafe helmets from supply and ensure they are recalled using the provisions of the ACL and state and territory road use laws.

**Option 2: Repeal the current mandatory safety standard and remake a mandatory standard which allows the supply of motorcycle helmets which comply with International Standards as well as the most recent version of the Australian/New Zealand Standard.**

In addition to the Australian/New Zealand Standard for protective helmets for vehicle users, there are also a number of International Standards for motorcycle helmets (see section 2 above). Another option for the review is to allow the supply of motorcycle helmets which meet certain International Standards provided the provisions in these International Standards do not result in the supply of helmets which are less safe than those which comply with the Australian/New Zealand Standard.

The ACCC has not at this stage conducted a comprehensive review of research and testing into the comparison of International Standards. This work would need to be conducted prior to including International Standards into any mandatory supply standard to ensure unsafe helmets are not supplied in Australia.

Adopting this option would require all state and territory use laws to change to allow motorcyclists to legally use helmets which comply with International Standards. Without this consistency between supply and use laws, suppliers would be able to legally supply helmets which motorcyclists could not legally use on Australian roads. This scenario would be at odds with the statutory guarantees in the ACL.

The supply of helmets which meet International Standards is likely to create an environment where a greater variety of brand and models of helmet could be supplied in Australia. Based on preliminary discussion with representatives of motorcycle rider associations and discussion on online motorcycle forums, this option appears to be preferred by motorcyclists. They argue that there are a number of suitable International Standards (such as those identified above) and motorcyclists should be able to purchase helmets which comply with these standards, in addition to those which meet the Australian/New Zealand Standard. It is claimed that helmets which comply with International Standards are cheaper than those which comply with the Australian/New Zealand Standard while providing a comparable level of safety.

While there may be some merit in this approach it is not a viable option at this stage. To become viable, state and territory laws would need to change to allow motorcyclists to legally wear helmets which meet certain International Standards. While the implications of such a change are not canvassed here some obvious considerations would be the likely need for state and territory use laws to continue the requirement for helmets to be clearly marked with the standard that is met and attest the helmets compliance so that Police could continue to enforce use laws. Ensuring compliance with such a requirement would present a greater challenge than the current laws because of the number of International Standards a helmet might comply with under this option.

In addition, developing a safety standard based on multiple Australian and International Standards would increase Government administration costs. An amendment to an Australian or International Standard would likely trigger a review of the supply standard to keep it up to date. In the circumstances where multiple voluntary standards change at different times, the safety standard may be constantly under review creating greater uncertainty for stakeholders.

**Option 3: Repeal the current mandatory safety standard and remake it allowing the supply of motorcycle helmets which comply with the current 2006 version of the Australian/New Zealand Standard.**

This option would result in the development of a new mandatory safety standard for motorcycle helmets based on the most recently published version of the Australian/New Zealand Standard (currently the 2006 version). While adoption of this option will improve alignment between the law for supply and a number of the current use laws in the short-term, it will not eliminate inconsistencies re-occurring in future or eliminate inconsistencies between the various use laws which motorcyclists must comply with.

## **7. Preferred regulatory option**

At this stage of the review, the preferred option is to recommend Option 1 for the following reasons:

- The Commonwealth is not in a position to resolve all inconsistency in both supply and use laws. It is able to improve the situation and prevent the circumstance where a helmet must meet one Australian Standard in order for it to be legally supplied to a consumer and, at the same time, meet another (different) Australian Standard for it to be legally worn.
- With helmets bearing a sticker or mark to indicate compliance with the Australian/New Zealand Standard (because use laws require such a sticker or mark) the ACCC can, in the absence of a mandatory supply standard, enforce the existing provisions of the ACL by purchasing and testing helmets against the standards they claim compliance with. Unsafe helmets that fail to comply with the relevant standard as claimed, may be subject to recall and suppliers may face action for breach of the ACL.
- This approach allows the ACCC to continue to ensure safe products are supplied to consumers but gives greater clarity and responsiveness to any changes to the standards called up in the use laws.
- In addition, by regulating the supply of helmets in Australia by relying on a sticker or marking on a helmet which indicates compliance with the relevant voluntary standard, an additional layer of regulation is avoided and the costs

associated with reviewing and maintaining that additional regulation are also avoided.

- If this option were to be recommended and adopted, the ACCC would write to state and territory agencies informing them of the approach being taken to support the prevailing use laws. The ACCC would also encourage greater uniformity in the wording of motorcycle helmet use laws so that a helmet that can be legally used in one jurisdiction would not be technically illegal to use in another. It is highly desirable that a helmet which meets uniformly recognised safety requirements, such as the Australian/New Zealand Standard can be legally used in any state or territory.

## 8. Consultation

Stakeholders are invited to make submissions on the options set out above—or on an alternative proposition not covered in this paper. Where one option is preferred over others, stakeholders are requested to explain why, and where relevant provide supporting evidence or documentation. Stakeholders that support the preferred option should still make a submission and provide reasons for supporting that option.

Submissions on these options will be considered before proceeding further with the review of the mandatory consumer product safety standard.

**Submissions should be sent to the ACCC by close of business, Monday 2 September 2013, to:**

[productsafety.regulation@accc.gov.au](mailto:productsafety.regulation@accc.gov.au)

Alternatively, submissions can be mailed to:

Director  
Chemicals and Regulated Products  
Product Safety Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

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