

MOTORCYCLE RIDERS' ASSOCIATION OF SOUTH AUSTRALIA INC.

G.P.O. BOX 1895 ADELAIDE, S.A. 5001

Email: mrasa.@mrasa.asn.au

Webpage: <http://www.mrasa.asn.au>



**Motorcycle Riders' Association of South Australia's
submission to the Australian Competition and Consumer
Commission's review of the Consumer Product Safety
Standard for Protective Helmets for Motorcyclists**

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Peter Mount**

The Motorcycle Riders' Association of SA (MRASA) thanks the ACCC for the opportunity to contribute to an enhancement of motorcyclists' safety through this review of current helmet standards.

One of the constitutional purposes of the MRASA is to improve the safety of motorcyclists through a diversity of approaches, including addressing legislation, public image, road safety matters and relevant Australian Standards. Hence, the MRASA is acutely aware of the contradictions, inconsistencies and anomalies which exist within the current helmet standard legislative framework, and recognises the value in rectifying these problems.

The briefing paper provided by the ACCC succinctly encapsulates the issues we have identified as underlying contributors to the present situation. We will therefore focus exclusively, though briefly, on discussing the proposed options, rather than reiterating the issues that have led to this review.

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 appears to have considerable value with regard to administrative complexity, costs, supply criteria and quality oversight.

However, whilst this option goes some way to addressing the problem, and seems relatively simple to expedite, it does not ensure consistency with regard to the certification process or police enforcement nationally, nor is it conducive to competition within the market or user access to helmets that comply with other standards, for interpretation and application of the

Australian Consumer Law (ACL) would still be reliant on the Australian/New Zealand standard, despite removal of the mandatory supply requirements.

This option would not address the lack of end-to-end regulatory oversight of the certification and accreditation process, which we believe has contributed to a diminution of the high standards for which Australia has been known.

Although the ACCC argues that 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”¹, it would not alter present problems with the enforcement of use laws based on voluntary Australian standards.

This option would fail to ensure availability of high-quality products and accountability for accuracy of stickers on helmets. Whilst it may appear to accommodate prevailing road use laws, the stickers by which enforcement is performed are inaccurate and hence use laws require an interpretation of the voluntary standards.

Generally, however, neither the police nor the end-user are legally qualified to interpret a standard and hence to determine a helmet’s compliance with a voluntary standard other than by a sticker or mark. Historically, this method has been amply demonstrated to be of dubious value.

Further, this option argues that a sticker or mark certifying compliance with the standard would constitute verification of compliance with these voluntary standards, but helmets in current use do not comply with all provisions of the voluntary standards required in use laws.

Current use laws have evolved from introduction of the voluntary standard in 1974 and currently require AS/NZS 1698 plus some form of sticker, in addition to the defective marking requirements of the voluntary standard. However, the “mark” required at Clause 8(g) of AS/NZS 1698:2006 simply does not exist. Even if the use laws were modified to correct anomalies with the additional marks required, the voluntary standard itself remains incapable of compliance.

The diversity and contradictory nature of these laws throughout Australia require interpretation of the standard on an assumption of meaning of the sticker, and underlie the problems with end-use compliance. It seems unlikely that this option would lead to any improvement in the situation.

Of further concern is that this option would abandon the only means of allowing continued use of helmets currently in use.

The sticker on a current helmet is largely meaningless and does not, of itself, demonstrate compliance with the voluntary standard.

We do not support Option 1 on the basis that we believe it is not a viable solution and will add further confusion.

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.

Given certain criteria, this option may address the deficiencies of Option 1 while facilitating market diversity, competitive pricing, national harmonisation of use laws and, particularly, consistently high safety standards.

Jurisdictional application of Consumer Protection Notice (CPN) No.9 of the Consumer Product Standard of the Trade Practices Act 1974 as amended on December 10 1990 to delete Clause 8(g) of Australian Standard 1698-1988² (pertaining to certification marks) would be a cost-effective, broadly encompassing and administratively straightforward mechanism for overcoming the current raft of problems.

The Australian Consumer Law (ACL) is administered identically in every state and territory by local Departments of Fair Trading or Consumer Affairs, and it already requires that all helmets comply with CPN No.9. All that would be required of the states and territories would be modification of their road rules to reference CPN No.9 exclusively, with no other reference to standards or other conditions. This would bring use and sale laws into harmony in accordance with the objectives of the Australian Consumer Law 2011.

This would avoid the difficulty users in states and territories have in complying with voluntary standards as referenced in their road rules. It would also enable existing helmets that had been approved by Certification Assessment Bodies (CABs) but currently deemed non-compliant with local road rules to be compliant, provided that the road rules referenced only CPN No.9 as the criterion for compliance. If road rules universally referenced CPN No.9 and current references to additional marks were removed, then helmets in use could comply.

Applying CPN No.9 in this way would provide the framework for the inclusion of other globally recognised standards such as those of the US, Japan and the UN/ECE. Whilst this may initially entail considerable administrative effort related to assessment of international standards, ongoing management should be significantly less than exists under the current system and vastly more useful to CABs, regulators, enforcement agencies, end-users and other stakeholders. In this sense, CPN No.9 should significantly mitigate administrative costs.

Utilising CPN No.9 should avoid the possibility, or impression, of constantly reviewing the supply standard whenever the Australian or an international standard is amended, as such amendments need only reference CPN No.9, as would the helmet sticker itself. Such usage would also avoid any conflict with statutory guarantees in the ACL. It would certainly avoid the present conflict between supply and use laws.

Referencing CPN No.9 would also form the basis for further regulatory reform in which the clearly apparent problems regarding the lack of regulation of the conformance process may be addressed.

It is presently the end-user who is made responsible for defects or misrepresentations of helmet labels, the voluntary standard to which the helmet is certified and whether the helmet is actually compliant with the standard as claimed. Market restrictions through confused administration of both use and sale laws have led to high prices, limited model availability and destabilising uncertainties. Stickers do not indicate compliance.

There are clearly significant problems with the Australian Standards and Conformance Infrastructure that must be addressed as a flow-on from this review.

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 is a diluted version of Option 2 that, at best, would provide retrospective protection to parts of the conformance process.

Regulatory reform remains necessary at both Commonwealth level, to improve control over certification, and the jurisdictional level, to cease referencing unsatisfactory and unreliable voluntary standards. The problem is not limited to AS/NZS 1698:2006, but also includes helmets certified to AS 1698-1988 after the 2003 sale into SAI Global Ltd of the certification trademarks of the Standards Association of Australia (SAA). Helmets in use also include those certified to AS/NZS 1698-1994, which have subsequently become illegal to use due to re-interpretation of Clause 8(g) as a result of sale of the certification marks of the SAA.

Whilst adopting this option would appear to remove some of the present confusion between standards for use or sale, the MRASA believes it would be a temporary solution of half-measures at best and would fail to address the underlying jurisdictional inconsistencies and inadequate regulation of conformance processes.

This option would also have to be repeated each time the standard was amended, with a concomitant displacement of supply and use law alignment, which would incur ongoing administrative cost and exacerbate confusion.

The MRASA believes choosing this option would not be a progressive step.

CONCLUSION

Whilst the MRASA would appreciate the ACCC's liaising with state and territory agencies to "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 another³, motorcycle organisations across Australia, including the MRASA, have been striving for such consistency for over thirty years, yet the situation now is probably worse than it has ever been, and we would not be hopeful of a positive outcome to this encouragement.

It appears that Intergovernmental Agreements (IGAs) via COAG may be of little value when the jurisdictions can simply refuse to comply and introduce further conflicts rather than attempt to correct the very anomalies the IGAs are designed to alleviate.

Another of the problem areas identified is that of stickers: stickers on helmets have become a substitute for compliance with the law, yet the stickers themselves are not valid indicators of compliance. They have been shown to be unreliable with regards to accuracy or truthfulness, yet such is the weight accorded stickers that motorcyclists now feel that they purchase a sticker with a helmet attached.

Nevertheless, at present they are the only means of attesting to a helmet's likely conformance with the standard, and it is therefore crucial that the regulatory framework facilitates, rather than allows compromises in, truth in labelling.

In considering these and any other options it must be borne in mind that all would require changes of some kind to jurisdictional road rules, and would therefore entail a degree of cost and inconvenience. However, cost and inconvenience should not necessarily be the determining factors in adjudging the best course of action given that people's lives or well-being may be dependent on any decision. From a practical perspective though, costs should be kept to a minimum without compromising any degree of safety.

The MRASA believes adoption of Option 2 and CPN No.9 as outlined would meet these criteria, with the particular benefit of achieving national uniformity in the road rules regarding helmet standards and use, and their associated enforcement.

1. ACCC Consultation Paper for Review of the Consumer Product Safety Standard for Protective Helmets for Motorcyclists, Canberra, ACT, August 5, 2013, p.11.
2. Tate, Michael (Minister of State for Justice and Consumer Affairs), Consumer Protection Notice No.9, Protective Helmets for Motorcyclists, Consumer Product Safety Standard, Section 65E, Trade Practices Act 1974, Federal Register of Legislative Instruments F2005B01097, Canberra, ACT, December 10, 1990.
3. ACCC op. cit.. p.15.