



Review of the safety standard for bicycle helmets

Consultation paper

September 2016



Disclaimer

The Australian Competition & Consumer Commission (ACCC) has developed this consultation paper to seek the views of stakeholders about the mandatory safety standard for bicycle helmets.

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Table of contents

1. Introduction	3
2. Policy options	3
3. Background.....	3
International regulation and standards	4
4. Bicycle helmet ‘supply’ and ‘use’ laws	4
5. The Australian Consumer Law	4
6. Detailed description of policy options	5
Option 1: Remove duplicate regulation of bicycle helmets.....	5
Option 1a: Revoke the safety standard.....	5
Option 1b: ‘Use’ laws could reference the safety standard	6
Option 2: Maintain the status quo.....	6
Option 3: Accept other trusted standards	7
7. Preliminary position.....	7
8. Consultation questions	8
9. Have your say	8
Glossary.....	9
Appendix: Features of the safety standard for bicycle helmets.....	10

1. Introduction

This paper is part of a stakeholder consultation about the mandatory safety standard for the supply of bicycle helmets in Australia.

The ACCC is interested in any information that could help us assess the options, particularly the potential impacts and benefits of revoking the standard.

The consultation process outlined in this paper may be the only opportunity for stakeholders to provide input to this review.

We encourage interested parties to make submissions.

2. Policy options

This consultation paper discusses the following policy options:

- Option 1a Revoke the safety standard.
- Option 1b ‘Use’ laws to reference the safety standard.
- Option 2 Maintain the status quo.
- Option 3 Accept other trusted standards

3. Background

The mandatory safety standard for bicycle helmets aims to minimise the risk of death, serious head injuries and injuries to cyclists by regulating the supply of bicycle helmets in Australia to ensure helmets meet specified safety characteristics.

The safety standard started in 1988 under the *Trade Practices Act 1974* (the TPA) in response to concerns about the safety of helmets on the market at the time. It is a legislative instrument on the Federal Register of Legislation, set out in *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001*. The legislative instrument declares the voluntary Australian standard AS/NZS 2063: 2008 – *Bicycle Helmets* to be the safety standard and varies some of the requirements. The ACCC last reviewed the safety standard in 2009.

The Australian Consumer Law (ACL), which is Schedule 2 to the *Competition and Consumer Act 2010* (CCA), took effect on 1 January 2011. Consumer product safety standards made under the TPA continued in force as if they had been made under the ACL.

The key requirements of the safety standard relate to the helmet retention system, projections, testing and performance requirements, safety markings and instructions for use. See Appendix A for details.

A Standards Australia technical committee is currently reviewing the voluntary Australian standard AS/NZS 2063:2008.

International regulation and standards

The European standard EN 1078 - *Helmets for pedal cyclists and for users of skateboards and roller skates* and the United States Consumer Product Safety Commission (CPSC) bicycle helmet standard are the most widely used bicycle helmet standards in the world.

Currently, it is not legal to supply or to use bicycle helmets that comply with these other standards unless they also comply with AS/NZS 2063:2008.

The differences between AS/NZS 2063 and the EN 1078 and CPSC standards include:

- The Australian Standard requires a 'load distribution' test of the helmet's ability to evenly distribute the 'load' of an impact. EN and CPSC standards do not have this.
- The Australian Standard requires that sample helmets pass multiple performance tests. The EN and CPSC standards allow separate helmets to be used for each test.
- The Australian Standard requires a lower force inside the helmet during impact testing (250 g-force) whereas the EN and CPSC standards allow a higher force inside the helmet (300 g-force).

4. Bicycle helmet 'supply' and 'use' laws

The safety standard for bicycle helmets regulates the 'supply', in trade or commerce, of bicycle helmets by way of sale, exchange, lease, hire or hire-purchase. The safety standard also covers offering to supply and manufacturing for supply.

State and Territory road safety authorities administer laws that govern which helmets can be legally *used* by bicycle riders on public roads ('use' laws). All Australian States and Territories require bicycle users to wear an approved bicycle helmet while riding on public roads and they enforce these laws locally. Each State and Territory requires the use of bicycle helmets that comply with the Australian standard AS/NZS 2063.

The *supply* and *use* laws overlap since they both require bicycle helmets to comply with AS/NZS 2063.

Some States and Territories have considered allowing bicycle helmets that comply with the European standard EN 1078 to be used. Under current arrangements helmets built to this standard cannot legally be supplied. In the absence of a mandatory safety standard for supply, State and Territory road safety authorities would have greater flexibility to specify the standards of helmets that could be used.

However, if different jurisdictions specify different bicycle helmet standards in their 'use' laws, then requirements would differ across Australia and it would be possible to buy a helmet in one State that was illegal to use in another.

5. The Australian Consumer Law

The ACL is a single, national law covering consumer protection and fair trading which applies nationally and in each state and territory of Australia. The ACL includes a number of provisions that may be used by the ACCC and in conjunction with State and Territory road use laws to ensure the safe supply of bicycle helmets.

Consumer product safety standards

Safety standards made under the ACL are co-operatively enforced by the ACCC and State and Territory fair trading agencies:

- Section 104 of the ACL allows the Commonwealth Minister to make a safety standard for consumer goods reasonably necessary to prevent or reduce the risk of injury to any person; and Section 105 allows for an Australian Standard either in whole or part, with additions or variations, to be declared a safety standard for consumer goods.
- Section 106 of the ACL states that a person must not supply consumer goods that do not comply with a safety standard.

Misleading or deceptive conduct

Section 18 of the ACL 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; and Section 29 provides a specific protection to consumers against false or misleading representations about goods. A false representation by a supplier that a bicycle helmet meets a particular standard may breach one or both of these provisions.

Consumer guarantees

Section 54 of the ACL provides consumer guarantees that goods are of acceptable quality including that they are free from defects and safe; and Section 55 provides consumer guarantees that goods are reasonably fit for any disclosed purpose.

Compulsory & voluntary recalls of unsafe goods

Section 122 provides for the compulsory recall of consumer goods that will or may cause injury to any person. In most cases of unsafe goods, 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.

6. Detailed description of policy options

Option 1: Remove duplicate regulation of bicycle helmets

The mandatory safety standard and State and territory 'use' laws separately set safety requirements for bicycle helmets. The following options explore whether the safety of helmets could be maintained whilst minimising regulatory duplication.

Option 1a: Revoke the safety standard

Description

If the Minister revoked the mandatory safety standard for the supply for bicycle helmets, State and Territory road use laws would continue to specify which helmets could be worn.

Under this option, suppliers would still need to comply with the general ACL provisions, such as those about product liability, misleading or deceptive conduct, false or misleading representations that goods are of a particular standard and consumer guarantees.

If bicycle helmet suppliers represent that their goods meet a particular standard (such as AS/NZS 2063), those assertions must be true and suppliers have an obligation to ensure that is the case. This provides a statutory mechanism for the ACCC to test helmets which claim compliance with the Australian standard or any other standard.

Non-compliance with the Australian standard would be a safety issue which may result in the recall of unsafe helmets and the ACCC pursuing breaches of the ACL.

The consumer guarantees of the ACL require goods to be of an acceptable quality including that they are fit for purpose, free from defects and safe. Any consumer buying a bicycle 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.

Benefits

Revoking the safety standard will remove the duplicative Commonwealth regulation for bicycle helmets, which is already covered by State and Territory road use legislation. *Supply* and *use* laws overlap since they both require bicycle helmets to comply with AS/NZS 2063.

States and Territories that want to permit the use of helmets complying with European or other international standards are prevented from doing so under current regulatory arrangements. In the absence of a mandatory safety standard for supply, State and Territory road safety authorities would have greater flexibility to specify the standards of helmets that could be used.

Limitations

The general consumer protections of the ACL would continue to prevent the supply of helmets that did not meet 'use' laws that are currently aligned in all States and Territories. However, if 'use' laws become inconsistent in different States or Territories, then it could be possible for a consumer to purchase a helmet in one State that was illegal to use in another.

Option 1b: 'Use' laws could reference the safety standard

Description

Under this option, the States and Territories would specify that any bicycle helmet that met the mandatory safety standard could be used.

Benefits

This option would remove duplicate regulation between the Commonwealth and States and Territories.

Limitations

This option may be administratively difficult as it would require nine Governments to implement an identical policy. In addition, States and Territories may differ as to their view on which standard the Commonwealth should adopt.

Option 2: Maintain the status quo

Description

This option would maintain the mandatory safety standard. It would continue to exist alongside State and Territory road safety laws for bicycle helmets.

The ACCC would look to revise and update the mandatory safety standard when Standards Australia completes its current review of AS/NZS 2063.

Benefits

No changes in regulation will mean certainty for suppliers and consumers in the short-term.

Limitations

The duplicative regulation of bicycle helmets would continue. States and Territories would continue to be prevented from allowing helmets to be used other than those that comply with AS/NZS 2063.

Option 3: Accept other trusted standards

Description

This option would amend the mandatory safety standard to allow helmets that meet trusted international standards (such as the EN or CPSC standards) to be supplied.

The ACCC has not analysed the relative safety merits of the EN or CPSC standards in detail (but see section 3 for a preliminary assessment). Nonetheless, these are the most widely accepted safety standards for bicycle helmets in the world.

Benefits

Suppliers and consumers would benefit from being able to supply and buy a greater range of helmets that comply with trusted international standards.

Limitations

If the mandatory safety standard allowed helmets to be supplied that were not allowed to be used in every State and Territory then it would be possible for a consumer to buy a helmet that is illegal to use on some roads.

It would therefore be important that all nine Governments agreed to any change that accepted trusted international standards such as the EN or CPSC bicycle helmet standards.

7. Preliminary position

The ACCC is of the view that consumer safety and confidence would be maximised, and compliance costs for suppliers minimised, if all Australian bicycle helmet regulations continue to reference the same standard or standards.

The mandatory safety standard is currently redundant as every State and Territory has 'use' laws requiring cyclists to wear helmets that comply with the Australian standard.

Revoking the mandatory safety standard (Option 1a) would remove the potential for a future conflict between Commonwealth supply and State and Territory use laws. The general consumer protections of the ACL that ensure that helmets are of an acceptable quality, including that they are fit for purpose, would remain in place.

Overlapping regulation also creates additional costs for governments, businesses and consumers, including costs to develop and maintain regulation and compliance costs.

The Office of Best Practice Regulation (OBPR) has advised that the ACCC may not need to develop a Regulation Impact Statement to revoke the safety standard.

8. Consultation questions

Please consider the following questions when making a submission:

1. Do you support the ACCC's preliminary position that the Commonwealth supply standard for bicycle helmets be revoked?
 - If not, why not?
2. Are there any other policy options that the ACCC should consider?
3. Do you have any other comments?

9. Have your say

The ACCC invites interested parties to provide information and comment on this review. Consultation is open from 28 September 2016 to 18 November 2016.

The ACCC prefers submissions to be made via the ACCC consultation hub at consultation.accc.gov.au.

Alternatively, email submissions to productsafety.regulation@acc.gov.au.

Submissions can also be posted to:

Director
Standards and Policy
Consumer Product Safety Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

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Glossary

Term	Definition
ACL	Australian Consumer Law
CCA	<i>Competition and Consumer Act 2010</i>
CPSC	Consumer Product Safety Commission (United States)
European standard	EN 1078 Helmets for pedal cyclists and for users of skateboards and roller skates
Use law	Law administered by Australian State and Territory governments regulating which helmets may be legally worn on roads.
Supply law	Law administered by the Commonwealth, State and Territory Governments regulating which helmets may be legally supplied in Australia.
Voluntary Australian standard	AS/NZS 2063 Bicycle Helmets

Appendix: Features of the safety standard for bicycle helmets

The requirements of the mandatory safety standard are based on the voluntary Australian standard AS/NZS 2063:2008.

Retention system

- A helmet's retention system must be designed to:
 - include a retaining strap to be worn under the lower jaw
 - be adjustable to produce tension on straps between all points at which the strap is attached to the helmet when the retaining strap is properly fastened
 - ensure that the retaining strap fitted to the lower jaw area is at least 15 mm wide
 - meet the requirements of helmet stability and strength of the retention system under anticipated conditions of use.

Projections

- A helmet should have no external rigid projections greater than 5 mm in height, except for ventilation holes and associated depressions.
- A helmet should have no internal projections or irregularities likely to cause injury to the wearer in case of an accident.

Testing and performance

- Bicycle helmets need to be tested for the following performance requirements:
 - the helmet should not move on the head during normal use, resulting in obscured vision
 - the helmet should significantly reduce force to the cyclist's head upon impact
 - the helmet should distribute the force of an impact
 - the straps which hold a helmet on a cyclist's head must not stretch to the point so as to allow the helmet to come off in an accident
 - a helmet's peak must not break and the deflection of the peak must not be less than 6.0 mm.

Safety markings

On the helmet

- Each helmet must be permanently and legibly marked in letters no less than 1.5 mm high indicating the:
 - registered name and address of the manufacturer and/or Australian agent
 - shell and liner construction material(s)
 - model and brand designation
 - front or rear of the helmet
 - helmet size
 - month and year of manufacture, which may be spelled out (for example 'November 2008') or in numerals (for example '11/2008').

- Each helmet must also be clearly marked so that the safety instructions are accessible without removal of the comfort padding or any permanent part of the helmet. Safety instructions must appear word for word as follows:
 - Bicycle helmet—NOT intended for use in motor sports or by motor cyclists.
 - Helmet can be seriously damaged by substances such as petrol, paint, adhesives, or cleaning agents.
 - Make no modifications.
 - Fasten helmet securely under the jaw.
 - If helmet shows signs of damage, destroy and replace it.
 - If helmet receives a severe blow, even if apparently undamaged, destroy and replace it.

On the helmet's packaging

- If the helmet is packaged, the following information must be clear and legible to the user without removal of the helmet:
 - the manufacturer's registered brand name
 - model designation
 - helmet size
 - a list of sizes available in the model range, together with the nominal mass for each size
 - the activities for which the helmet is designed.

The standard also specifies a series of safe-use instructions that must be provided to the purchaser in the form of a brochure accompanying the helmet, or a sticker.