

Submission to the Australian Government Treasury

Improving mandatory standards under the Australian Consumer Law – Decision Regulation Impact Statement

Date of Submission: 25 October 2024

Author:

Dr. Andrew McIntosh (PhD)

1. This submission should be read in conjunction with my 25 January 2022 submission "*Mandatory Standards Submission, Dr AS McIntosh, 25 January 2022.*"
2. In the period since the submission and 11 October 2024, the ACCC published the updated bicycle helmets mandatory standard. This is a test case for the approach described in the proposed amendments to Australian Consumer Law.
3. The new mandatory standard states that a bicycle helmet must comply with any one of the six following standards:
 1. Australian New Zealand standard AS/NZS 2063:2020 – Helmets for use on bicycles and wheeled recreational devices
 2. Australian New Zealand standard AS/NZS 2063:2008 – Bicycle Helmets
 3. European standard EN 1078:2012+A1:2012 Helmets for pedal cyclists and for users of skateboards and roller skates
 4. US Consumer Product Safety Commission standard US CPSC 16 C.F.R. Part 1203 Safety Standard for Bicycle Helmets
 5. American Society for Testing and Materials (ASTM) International standard F1447-18 Standard Specification for Helmets Used in Recreational Bicycling or Roller Skating
 6. SNELL standard B-95 1995 Bicycle Helmet Standard, 1998 revision, Standard for Protective Headgear for Use in Bicycling.
4. In short, for the new mandatory bicycle helmet standard, the Commonwealth Minister has recognised overseas product safety standards alongside Australian safety standards when updating an existing mandatory safety, as per the proposed amendment.
5. Based on comparable experience with the removal of the mandatory motorcycle helmet standard, the following is likely to happen:
 1. Within two to three years there will be very few helmets sold that comply with AS/NZ 2063:2020. We have very good evidence from Australian research on bicycle helmet effectiveness that the previous system based on AS/NZS 2063 compliant helmets had worked very well – e.g. standards, regulations and conformity assessment – to control injury risks.
 2. Consumers, road safety groups, cyclists etc will have a reduced input into the safety performance of helmets. If we want something specific for the Australian environment, there is no avenue to change EN or USA standards.
 3. There will be greater dumping of non-compliant helmets into the Australian market via internet retailers who do not have a physical presence in Australia.

4. Conformity Assessment Bodies (CABs) are unlikely to have any representation in Australia.
5. Certification processes are likely to vary, e.g. independent certification (CAB) vs. self-certification.
6. In changing the mandatory helmet law, the ACCC ignored the deliberations of Standards Australia CS 110 regarding performance criteria in other national and regional bicycle helmet standards. The ACCC is a member of CS 110. These include helmet stability and impact performance, e.g:
 1. AS/NZS 2063:2020 is more stringent than AS/NZS 2063:2008. Improvements were made in performance requirements regarding helmet stability and impact performance.
 2. ASTM F1447-18, CPSC and EN 1078:2012 test the helmet dynamic stability with a 'roll off' test as does AS/NZS 2063:2020. However, AS/NZS 2063:2020 limits the helmet rotation to 45°, whereas ASTM F1447-18, CPSC and EN 1078:2012, for example, allow the helmet to 'almost come off', i.e. *"No bicycle helmet shall come off of the test headform."* In test laboratories, this means that the helmet can be dangling from the headform and pass the standard, as a result the wearer may lose head protection in a crash.
 3. There are differences in impact performance requirements, which arguably infer superior protection to AS/NZS 2063 conforming helmets.
 4. EN 1078 permits helmets held together with elastic straps.
7. SNELL is a 'private' foundation. A SNELL standard is not equivalent to an Australian (AS), European (EN) or American standard (ASTM, CPSC). The SNELL certification system is incompatible with the Australian market. Australia allowed bicycle helmets with claims of compliance to SNELL at one point, then reversed that decision.
8. The June 2004 report 'Assessing the Level of Safety Provided by the Snell B95 Standard for Bicycle Helmets' by Gibson and Cheung for the ATSB (Road Safety Research Report CR220) concluded:
 1. *"The testing showed that helmets certified to AS/NZS 2036-1996 would perform as expected from the requirements in the standard. By contrast, the Snell B95 certified helmets had a lack of consistency in meeting the requirements of the Snell B95 standard. This lack of consistency is a clear indication of inadequate quality assurance during the manufacturing process. On the basis of this lack of consistent performance when tested, the sample of Snell B95 certified helmets were not capable of giving the level of protection expected from the*

requirements of the standard. At least eight percent of the sample of the Snell B95 certified bicycle helmets tested for this project would fail to protect the user to the level expected from the performance requirements of the standard."

9. Finally, regarding SNELL, it would be simple to print fake SNELL stickers and sell helmets into the Australian market. This has already happened (<https://smf.org/certlist/warnings/warningsArchive>)
10. The system that we have had in Australia has functioned to maximise helmet performance and minimise the issues described above. That system has involved a formal process of community consultation via Standards Australia as well as independent conformity assessment and certification.
11. The system proposed in 'Decision regulation impact statement Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law' (October 2024) appears to have the following characteristics:
 1. The ACCC and Minister become technical masters in the topic areas covered in mandatory product safety standards. In contrast, improvements to the current processes of developing and publishing Australian Standards would allow relevant public, technical, consumer, business and government input into the development of voluntary standards, including adoptions of EN and ISO standards, which could be adopted in part or whole as mandatory standards by a more efficient government / government authority in a timely manner. This would likely also satisfy the sentiments of the business community regarding compliance costs and unnecessary testing and labelling.
 2. A projected total benefit to business of \$500 million per annum in a population of 27 million equates to less than \$20 per person per annum, assuming all business benefits passed onto the consumer. There is no consideration in the RIS for increased costs in other sectors, e.g. health and insurance, arising from managing a handful of additional severe injuries per annum related to poor safety performance. Benefits to consumers due to product range and competition will likely be small.
 3. A vague standards review process "*...long established consultation and review procedures...*" which will purportedly maintain "*a robust product safety framework.*"