

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Small Business and Assistant Treasurer

*Australian Consumer Law Safety Standard (Protective Helmets for Motor Cyclists)
Revocation Notice 2015*

Competition and Consumer Act 2010

Consumer Protection Notice No. 5 of 2015

Overview

This legislative instrument revokes the consumer product safety standard for protective helmets for motor cyclists (the Australian Consumer Law safety standard), made under section 104(1) of the Australian Consumer Law on 1 January 2011 by reason of Item 4 of Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*. The set of requirements for the Australian Consumer Law safety standard were the same requirements contained in Consumer Protection Notice No.9 of 1990, *Trade Practices Act 1974 – Consumer Protection Notice No.9 of 1990 – Consumer Product Safety Standard: Protective Helmets for Motor Cyclists* (Federal Register of Legislative Instruments No. F2005B01097).

Consumer Protection Notice No.9 of 1990, declared under section 65C of the *Trade Practices Act 1974*, was signed by the responsible Commonwealth Minister on 10 December 1990 and published in the Commonwealth Gazette on 19 December 1990. It was registered on the Federal Register of Legislative Instruments on 7 April 2005.

The Australian Consumer Law safety standard required motor cycle helmets supplied in Australia to meet the requirements in Australian Standard *AS 1698—1988: Protective helmets for vehicle users* subject to two minor non-technical variations. The Australian Consumer Law safety standard applied to the supply of motor cycle helmets in Australia and therefore placed an obligation on suppliers of motor cycle helmets to comply with the requirements in the Australian Consumer Law safety standard.

State and Territory road safety agencies administer Rules (which are regulations made under Road Transport Acts and generally referred to as ‘Road Rules’). These Road Rules specify that motor cyclists and their passengers must wear an approved helmet while riding on public roads. Other State and Territory laws set out a definition of an approved helmet and this definition varies across States and Territories. In Victoria, Queensland and the Northern Territory an approved helmet is one that complies with the United Nations Economic Commission for Europe (UN ECE) Regulation 22-05 or one or more versions of the relevant Australian Standard. An approved helmet in other States and Territories is one that meets one or more versions of the relevant Australian Standard. In New South Wales and Victoria, if the helmet has been manufactured to meet the Australian Standard, it must comply with the Australian Standard that was in force at the time of manufacture, if manufactured in Australia, or importation into Australia.

State and Territory laws also require helmets to be marked to indicate that they are an approved helmet and Police use these markings to assess compliance with the Road Rules and other relevant laws.

The current version of the Australian Standard was published in 2006. Therefore, since 2006, motor cyclists in New South Wales and Victoria that wear an Australian Standards compliant helmet, have been required to wear a helmet that complies with the 2006 version of the Australian Standard if the helmet was imported into or manufactured in Australia after 2006. Helmets compliant with this version of the Australian Standard are supplied nationally. This version of the Australian Standard (i.e. the 2006 version) is different to the version of the Australian Standard with which suppliers were required to comply with under the Australian Consumer Law safety standard. This inconsistency has created stakeholder confusion.

The Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010*, includes a number of consumer guarantees in Division 1, Part 3-2. Included in the consumer guarantees is the guarantee as to acceptable quality (s.54) which requires, among other things, that goods should be fit for all the purposes for which goods of that kind are commonly supplied. In order to be fit for purpose, a motor cycle helmet should be able to be worn lawfully wherever it is supplied.

In these circumstances, because the Australian Consumer Law safety standard for the supply of motor cycle helmets and the Road Rules and other laws, which regulate the use motor cycle helmets were inconsistent, suppliers could not comply with the Australian Consumer Law safety standard and also supply consumers with a helmet that was fit for purpose and therefore satisfied the consumer guarantee as to acceptable quality.

The Australian Consumer Law also contains general consumer protection provisions that will continue to apply to the supply of motor cycle helmets. These provisions provide for the removal of defective products that might cause injury and require suppliers to ensure that helmets claiming to meet road user law standards, actually do so. Given the existence, content and operation of Road Rules in all States and Territories, the Australian Consumer Law safety standard for the supply of motor cycle helmets is no longer necessary.

Background

Legislative Power

The *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* together with the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*, amended the *Trade Practices Act 1974* to implement a new national consumer law regime known as the Australian Consumer Law. The *Trade Practices Act 1974* was renamed the *Competition and Consumer Act 2010* on 1 January 2011. Transitional arrangements within the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* provide that a product safety standard under section 65C of the *Trade Practices Act 1974* will continue in force under the Australian Consumer Law as if it had been made under section 104 of the Australian Consumer Law.

Subsection 104(1) of the Australian Consumer Law provides that the Commonwealth Minister may, by written notice published on the internet, make a safety standard for consumer goods of a particular kind.

Section 33(3) of the *Acts Interpretation Act 1901* states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Therefore, the power to make a safety standard under subsection 104(1) of the Australian Consumer Law includes the power to revoke it.

Consultation

For the purposes of section 17 of the *Legislative Instruments Act 2003* consultation on the revocation of the Australian Consumer Law safety standard has been undertaken.

In August 2013, the Australian Competition and Consumer Commission sent a consultation paper to stakeholders including motor cycle helmet suppliers and retailers, test agencies, certifiers, bodies representing motor cyclists and State and Territory agencies responsible for the Road Rules. The consultation paper was also published on the Product Safety Australia website and the ‘australia.gov.au’ website. The consultation paper explained the regulatory environment for motor cycle helmets, included a number of options under the review and identified a preferred option. Many stakeholders provided submissions on the consultation paper and those submissions were taken into account in finalising the legislative instrument.

The Office of Best Practice Regulation advised the Australian Competition and Consumer Commission that a regulation impact statement was not required. The Office of Best Practice Regulation reference number was 14890.

Repeal Provisions

Under subsection 131E(1)(b) of the *Competition and Consumer Act 2010*, a notice made under subsection 104(1) of the Australian Consumer Law is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This legislative instrument is subject to *Part 5A—Repeal of spent legislative instruments and provisions* of the *Legislative Instruments Act 2003*. As this legislative instrument’s sole legal effect is to repeal another legislative instrument, this legislative instrument will be automatically repealed on the day after it is registered on the Federal Register of Legislative Instruments.

Commencement

This legislative instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

This legislative instrument revokes the consumer product safety standard for protective helmets for motor cyclists (the Australian Consumer Law safety standard) made under section 104(1) of the Australian Consumer Law. The requirements for the Australian Consumer Law safety standard are the same requirements contained in Consumer Protection Notice No.9 of 1990, *Trade Practices Act 1974 – Consumer Protection Notice No.9 of 1990 – Consumer Product Safety Standard: Protective Helmets for Motor Cyclists* (Federal Register of Legislative Instruments No. F2005B01097).

The requirements imposed upon suppliers by the Australian Consumer Law safety standard for the supply of motor cycle helmets are inconsistent with the obligations imposed on motor cyclists by Road Rules and other relevant laws administered by States and Territories.

In the absence of an Australian Consumer Law safety standard, suppliers will be required to supply motor cycle helmets that enable motor cyclists to comply with the Road Rules and other relevant laws, in accordance with the consumer guarantee provided for in section 54 of the Australian Consumer Law that goods supplied are of acceptable quality, which includes that they are both safe and fit for purpose. The Road Rules require motor cyclists to wear an approved helmet. The Australian Consumer Law also includes general consumer protection provisions, which can assist in protecting consumers from unsafe motor cycle helmets.

Human Rights Implications

The legislative instrument removes regulation for the supply of motor cycle helmets and it does not limit or enhance human rights.

Conclusion

The legislative instrument does not limit or enhance human rights.