

## EXPLANATORY STATEMENT

### *Consumer Goods (Bicycle Helmets) Safety Standard 2024*

#### 1. Purpose and Background

The Assistant Treasurer and Minister for Financial Services (the **Minister**) has made the *Consumer Goods (Bicycle Helmets) Safety Standard 2024* (the **Safety Standard**), pursuant to section 104 of the Australian Consumer Law (the **ACL**), which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **CCA**).

The Australian Government introduced the *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001* (the **Repealed Safety Standard**) to minimise the risk of serious injury or death to cyclists in bicycle accidents by offering protection to the cyclist's head.

The Safety Standard references 2 voluntary Australian standards and 4 comparable overseas standards, while maintaining the safety of bicycle helmets, as used by consumers who ride bicycles, electronic bicycles (e-bikes) and other wheeled recreational devices.

#### Operation of the Safety Standard

The Safety Standard applies to the supply of bicycle helmets, it prescribes requirements for the design, construction, performance, and safety marking of bicycle helmets to minimise the risk of serious injury or death from accidents.

The Safety Standard requires bicycle helmets comply with one of the following standards:

- **Australian/New Zealand standard:** AS/NZS 2063:2008, *Bicycle helmets*
- **Australian/New Zealand standard:** AS/NZS 2063:2020, *Helmets for use on bicycles and wheeled recreational devices*
- **European standard:** EN 1078:2012+A1:2012, *Helmets for pedal cyclists and for users of skateboards and roller skates*
- **US Consumer Product Safety Commission (CPSC) standard:** 16 C.F.R. Part 1203, *Safety Standard for Bicycle Helmets*
- **US standard:** ASTM F1447-18, *Standard Specification for Helmets Used in Recreational Bicycling or Roller Skating*
- **Snell standard:** Snell B-95, 1995 Bicycle Helmet Standard, 1998 revision *Standard for Protective Headgear for Use in Bicycling*

A description of the provisions is set out later in this document.

#### Repealed Safety Standard

The Safety Standard also repeals the *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001* (Federal Register of Legislation No. F2009C01271).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Cth), 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.

## 2. Incorporated Australian and Overseas Standards

Where practicable, product safety legislative instruments reference only extrinsic material that is readily accessible for free by the public. However, as in the current case, many product safety legislative instruments need to incorporate extrinsic technical standards over which certain bodies have copyright, which means the standards may need to be purchased.

The Australian, European and US standards referenced in this instrument are available for purchase at the Intertek Inform website (<https://www.intertekinform.com>) or the Techstreet website (<https://www.techstreet.com>). The CPSC standard is available free of charge at the Electronic Code of Federal Regulations website (<https://www.ecfr.gov>) and the Snell standard is available free of charge at the Snell Foundation's website (<https://smf.org/stds>).

The Australian Competition and Consumer Commission (**ACCC**) can make a copy of the above standards available for viewing at one of its offices, by prior arrangement and subject to licensing conditions.

## 3. Consultation

Before the Safety Standard was made, the Minister was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003*.

The ACCC circulated a consultation email to key stakeholders on the review of the mandatory safety standard for bicycle helmets for a four-week period in July 2022. The email consultation detailed the following policy options:

- Option 1 – Allow compliance with either the updated voluntary Australian standard, or equivalent overseas standards (the recommended option)
- Option 2 – Revoke the mandatory safety standard

The ACCC received 18 submissions from a range of stakeholders, including retailers, wholesalers, non-affiliated individuals, importers, insurers, engineers, helmet manufacturers, retail associations, regulatory agencies, and a cycling safety foundation.

The majority of stakeholders (14) supported the ACCC's recommended option to allow compliance with either the updated voluntary Australian standard or one of the 4 overseas standards. One stakeholder supported revoking the mandatory safety standard (option 2) and 3 stakeholders did not support either option.

## 4. Disallowance and Sunsetting

By operation of subsections 44(1) and 54(1) of the *Legislation Act 2003*, the instrument is not subject to disallowance or sunsetting because its enabling legislation, the ACL (at Schedule 2 of the CCA), facilitates the operation of an intergovernmental scheme involving the Commonwealth and all the States and Territories (the *Intergovernmental Agreement for the Australian Consumer Law*), and the ACL authorises the making of the instrument for the purposes of that scheme. To make it so would frustrate the importance of uniform product safety standards in reducing the supply of unsafe goods and related services for Australian consumers, which is a key part of the Australian Consumer Law as an intergovernmental scheme involving the Commonwealth and the States and Territories.

Item 16 in the table at section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* also provides that the instrument is not subject to the sunsetting provisions of the *Legislation Act 2003*.

## **5. Commencement**

The legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

## **6. Transitional arrangements**

This instrument provides a transitional period of 18 months, beginning on the day this instrument commences.

During the transition period, suppliers must meet the requirements of either:

- The *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001*, or
- The *Consumer Goods (Bicycle Helmets) Safety Standard 2024*.

After the transition period, suppliers must meet the requirements of the *Consumer Goods (Bicycle Helmets) Safety Standard 2024*.

## **7. Regulation Impact Assessment**

The Office of Impact Analysis (**OIA**) advised that a Regulation Impact Assessment was not required (OIA ID 22-03571).

## Details of the *Consumer Goods (Bicycle Helmets) Safety Standard 2024*

### PART 1 – PRELIMINARY

#### Section 1 – Name

This section sets out that the title of the legislative instrument is the *Consumer Goods (Bicycle Helmets) Safety Standard 2024*.

#### Section 2 – Commencement

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation. The Federal Register of legislation may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

#### Section 3 – Authority

This section provides that the instrument is made under section 104(1) of the ACL. Section 104 of the ACL allows the Minister to make safety standards for consumer goods and product-related services.

#### Section 4 – Schedules

This section provides that each instrument specified in a Schedule is repealed as set out in that Schedule, and any other item in a Schedule has effect according to its terms.

#### Section 5 – Definitions

This section provides the definitions of terms used in the instrument.

***Australian/New Zealand Standard 1*** means the Australian/New Zealand Standard AS/NZS 2063:2020, *Helmets for use on bicycles and wheeled recreational devices*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as amended and in force or existing at the time when this instrument commences.

***Australian/New Zealand Standard 2*** means the Australian/New Zealand Standard AS/NZS 2063:2008, *Bicycle helmets*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as amended and in force or existing at the time when this instrument commences.

***European Standard*** means the European Standard EN 1078:2012+A1:2012, *Helmets for pedal cyclists and for users of skateboards and roller skates*, published by the European Committee for Standardization, as amended and in force or existing at the time when this instrument commences.

The term ***'helmet'*** is intended to capture helmets which are for use when riding bicycles, including bicycle helmets which are also intended for use with other wheeled recreational devices, such as bicycle helmets which are also intended for use on electronic bicycles and skateboards. Helmets which are supplied and intended exclusively for other wheeled recreational devices which are not bicycles are excluded. For example, a helmet that is supplied only for use when skateboarding and is not marketed as, or not intended to be used when riding bicycles would be excluded from the term ***'helmet'*** for the purpose of this instrument.

The term ***'wheeled recreational devices'*** is intended to mean skateboards, roller blades, roller skates, kick scooters and other recreational devices used to transport a person. It is intended to include devices that are power-assisted.

**Snell Standard** means the Snell B-95, 1995 Bicycle Helmet Standard, 1998 revision *Standard for Protective Headgear for Use in Bicycling*, published by the Snell Memorial Foundation, as amended and in force or existing at the time when this instrument commences.

**US Standard 1** means the American Society for Testing and Materials Standard ASTM F1447:2018, *Standard Specification for Helmets Used in Recreational Bicycling or Roller Skating*, published by the American Society for Testing and Materials International, as amended and in force or existing at the time when this instrument commences.

**US Standard 2** means the U.S. Consumer Product Safety Commission (16 C.F.R. Part 1203), *Safety Standard for Bicycle Helmets*, published by the United States Consumer Product Safety Commission, as amended and in force or existing at the time when this instrument commences.

**Transitional period** means the period of 18 months beginning on the day this instrument commences.

This section also includes definitions of standards that are incorporated by reference into the instrument. In each of these definitions, the phrase “as in force or existing at the time when this instrument commences” is intended to capture the latest version of that standard as at the time the instrument commences. For example, if a standard has two amendments as at the time the instrument commences, then the definition in this section is intended to capture the version of that instrument that incorporates those two amendments. This is consistent with section 14 of the *Legislation Act 2003* (Cth).

## Section 6 – Application

This section sets out the consumer goods to which the Safety Standard applies. The Safety Standard only applies to certain types of helmets (as defined in section 5 of this instrument).

This section provides that the Safety Standard does not apply to helmets used for downhill mountain bicycle competitive racing, BMX bicycle competitive racing, toy helmets and motorcycle helmets. These terms are intended to take their ordinary meaning.

Helmets used for competitive downhill mountain bicycle, BMX racing and for motorcycle riding are excluded as other standards apply to the design and manufacture of these types of helmets. Toy helmets are those intended for play (such as those which are part of costumes) and not designed or manufactured for use on bicycles or wheeled recreational devices. They are therefore excluded from this instrument.

## **PART 2 – BASIC REQUIREMENTS**

### Section 7 – Requirements during the transitional period

This section provides that during the transition period (18 months), suppliers must comply either with the *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001* or the requirements in section 9 of this instrument.

The intention of the transition period is to assist suppliers to understand and adjust to the change in legislation.

### Section 8 – Requirements after the transitional period

This section provides that after the transition period ends, helmets to which the instrument applies must comply with the requirements in section 9 of this instrument.

## **PART 3 – DETAILS OF REQUIREMENTS**

### **Section 9 – Requirements for regulated helmets**

This section provides that a helmet complies with this instrument if it complies with each provision of any of the listed standards in subsections (a) to (e). The intention is that if a helmet complies with every single provision in one of the listed standards, then they will meet the requirements of the instrument.

## **SCHEDULE 1 – REPEALS**

### **Section 1 – The whole of the instrument**

This section provides that the whole of the *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001* is repealed.