Attachment B

REGULATION IMPACT STATEMENT

TRADE PRACTICES ACT 1974

CONSUMER PRODUCT SAFETY STANDARD

FOR

BICYCLE HELMETS

October 2009

Australian Competition & Consumer Commission

INTRODUCTION

The Australian Competition and Consumer Commission (ACCC) has responsibility for the administration of the consumer product safety standard (the Standard) for protective helmets for pedal cyclists under the *Trade Practices Act 1974* (the Act).

The Council of Australian Government (COAG) principles require that regulations undergo regular review to examine whether continuing government intervention in the market is justified.

A draft regulation impact statement (RIS) formed the basis of consultation with stakeholders as part of the review process.

This RIS outlines the problem being addressed by the Standard for bicycle helmets, examines changes in the market since its last review and considers a number of options for the Standard administered by the ACCC.

Background

The Standard for bicycle helmets was first introduced by Consumer Protection Notice published in the Commonwealth Government Gazette on 13 January 1988 in response to concerns about the adequacy of the safety of bicycle helmets in the market.

The Standard was last comprehensively reviewed in January 1999. The current Standard was introduced in 2001 by way of Regulations (SR 2001 No. 279 as amended).

The Standard is based on two recognized standards, the Australian/New Zealand Standard *AS/NZS 2063:1996 Pedal cycle helmets* and the Snell B-95 Standard (*1995 Standard for protective headgear 1998 Revision For Use in Bicycling*).

Compliance with either AS/NZS 2063:1996 or Snell B-95 Standard as amended by Statutory Rules 2001 No. 279 will meet the requirements of the Standard.

On 27 November 2008, Standards Australia published a revised version of its standard for bicycle helmets AS/NZS 2063:2008.

The Snell B-95 Standard is the current Snell Standard and a revised version has not been published by the Snell Memorial Foundation since 1998.

Regulatory objective

The Standard for bicycle helmets aims to minimise the risk of deaths, serious head injury and serious injuries to cyclists by regulating the supply of bicycle helmets in Australia so that they are supplied with performance characteristics likely to increase head protection for cyclists and information to encourage the safe use of bicycle helmets.

The objective is achieved by setting minimum performance requirements for helmet construction, coverage, retention system durability and strength, and by requiring certain markings and the provision of safe-use instructions.

The regulatory objective is complementary to compulsory helmet wearing for pedal cyclists which was introduced Australia-wide between 1990 and 1992 and is administered through roads and traffic administrations in each state and territory.

PROBLEM

The problem being addressed

In the event of a bicycle accident cyclists may suffer death or serious injuries. There is evidence that cyclists are subject to a greater risk of serious head injury if they are involved in an accident and are not wearing an effective safety helmet. Helmets offer protection to the head and brain reducing the risk of fatal injuries.[1]

Consumers are unable to ascertain through physical examination whether a bicycle helmet complies with relevant safety standards and performance characteristics designed to protect the head. Where adequate information is not readily available to consumers there is a form of market failure that can reduce consumer safety.

The safety of a bicycle helmet depends on a range of complex factors many of which require laboratory testing facilities to ascertain.

In the absence of the Standard it would be legal to supply bicycle helmets that did not comply with the Australian/New Zealand Standard or any other standard. Without the Standard there may be a greater potential for the supply of substandard bicycle helmets that do not provide adequate head protection to cyclists in the event of an accident.

The supply of bicycle helmets that do not comply with the design, construction, performance, marking and packaging requirements of a safety standard may increase the risk of injury and death in the event of bicycle accidents.

The current Standard references Australian/New Zealand Standard AS/NZS 2063:1996 which has now been superseded.

Australian/New Zealand Standard AS/NZS 2063 has been reviewed by Standards Australia to take account of advances in technology and hazard reduction methodologies. The revised Australian/New Zealand Standard AS/NZS 2063:2008 differs from AS/NZS 2063:1996 in the following respects. AS/NZS 2063:2008:

- adopts the more specific external projection requirements from AS/NZS 3838, *Helmets for horse riding and horse-related activities* (see Clause 5.3). A projection is any fixed part that extends abruptly beyond the internal and external surface of the helmet;

- specifies the use of ISO (International Organisation for Standardisation) headforms in the testing of helmets through reference to AS/NZS 2512.1 (see Clause 6.5) in line with international standards;

- reduces the impact attenuation requirements from an allowed maximum of 300g to 250g (see Clause 7.4) which aims to decrease the force to the cyclist's head when the helmet hits a hard surface;

- replaces the static strength retention test with a dynamic strength retention test through reference to AS/NZS 2512.5.2 (see Clause 7.6). The latter is regarded as a more

[1] *Bicycle helmets and injury prevention: A formal review*. ATSB Report CR 195, June 2000. Attewell, R. and Glase, K., Covance Pty Ltd. McFadden, M., ATSB. In an ATSB commissioned report, Attewell et al (2001) quantified bicycle helmet efficacy by using a formal meta-analytical approach based on peer reviewed studies. Attewell concluded that there is clear evidence that bicycle helmets prevent serious injury and even death. The upper bounds of the 95% confidence intervals provided conservative risk reduction estimates of at least 45% for head injury, 33% for brain injury, 27% for facial injury and 29% for fatal injury.

rigorous test. The retention system is the complete assembly by means of which the helmet is retained in position on the head during use and it may include a harness; and

- introduces the peak deflection test for measuring the deflection of a peak under a load (see Clause 7.7). A peak is a permanent or detachable extension of the helmet above the eyes.

The link between helmet wearing and a reduction in deaths and the severity of head injuries in cyclists is now well established. However the link between *compliant* helmets and injury reduction is harder to establish. An absence of sufficient qualitative injury data continues to hinder any research that might strongly link increased head protection through the proper use of bicycle helmets with high rates of compliance with AS/NZS 2063 or Snell B-95 Standard to trends in reduced head injuries and head injury deaths in Australian cyclists.

This makes it difficult to measure the effectiveness of the Standard.

Nevertheless, in the current scenario of substantially increased cycling activity, high rates of helmet use and high rates of helmet compliance with AS/NZS 2063:1996 combined with substantially decreased head injury deaths and serious injuries in cyclist, a strong inference can be drawn that bicycle helmet regulations are effective.

Death[2] and injury data

In the fifteen years from 1991 to 2005, 665 cyclists were killed in road crashes. In the 1990s, the number of cyclist deaths ranged from 40 to 80 per year. In the 2000s so far (2000 to 2005), the range has been from 26 to 46 per year (Figure 1).

Although there is debate in regards to the root causes for the decrease, this is clear evidence that the number of deaths has decreased since the 1990s when cyclist deaths in road crashes constituted on average between 2 and 3 per cent of the total deaths in road crashes in Australia.

Bicycle sales in Australia averaged 795,000 per year for the four years 1998 – 2001.[3] In the four years since they have averaged 1,133,000 per year and been over one million in each of those four years. Although there has been an increase in the number of bicycles sold in the period 1998 to 2005, the number of deaths in road crashes has remained in the range of 26 to 46 (Figure 1).

The Australian Transport Safety Bureau (ATSB) examined coronial information on cyclist deaths in road crashes for the years 1996 to 2000. The database contained coded information on 222 of the 224 cyclist deaths in this period. 222 cyclists died in 221 crashes involving 433 vehicles (including bicycles).

Nearly one-third (60) of all male cyclists (187) and nearly half (27) of male cyclists in the 10 to 19 age group (55) killed in road crashes were not wearing a helmet. Similarly, nearly one-third (11) of all female cyclists (35) killed in road crashes in the period were not wearing a helmet.

The ATSB also examined the text of coroners' reports on cyclist deaths in road crashes for the period 2001 to 2004. Descriptions of the circumstances of 113 of the 149 cyclist deaths in this period (76 per cent of cases) were available on the National Coronial Information System at

[2] Unless referenced otherwise in this section, *Deaths of cyclists due to road crashes.* ATSB Road Safety Report, July 2006.
[3] Australian Bureau of Statistics 2006, as cited with notes in *The Australian Bicycle Industry Report 2006*. Bicycle Industries Australia Ltd. www.bikeoz.com.au.

the time of its study. ATSB observed that helmet usage in 65 of the cases was unknown, but in the 48 cases where it was known, 30 of the cyclists were wearing a helmet and 18 were not. About one-third (10) of cyclists wearing a helmet died of head injuries, while about half (15) of those not wearing a helmet died of head injuries.

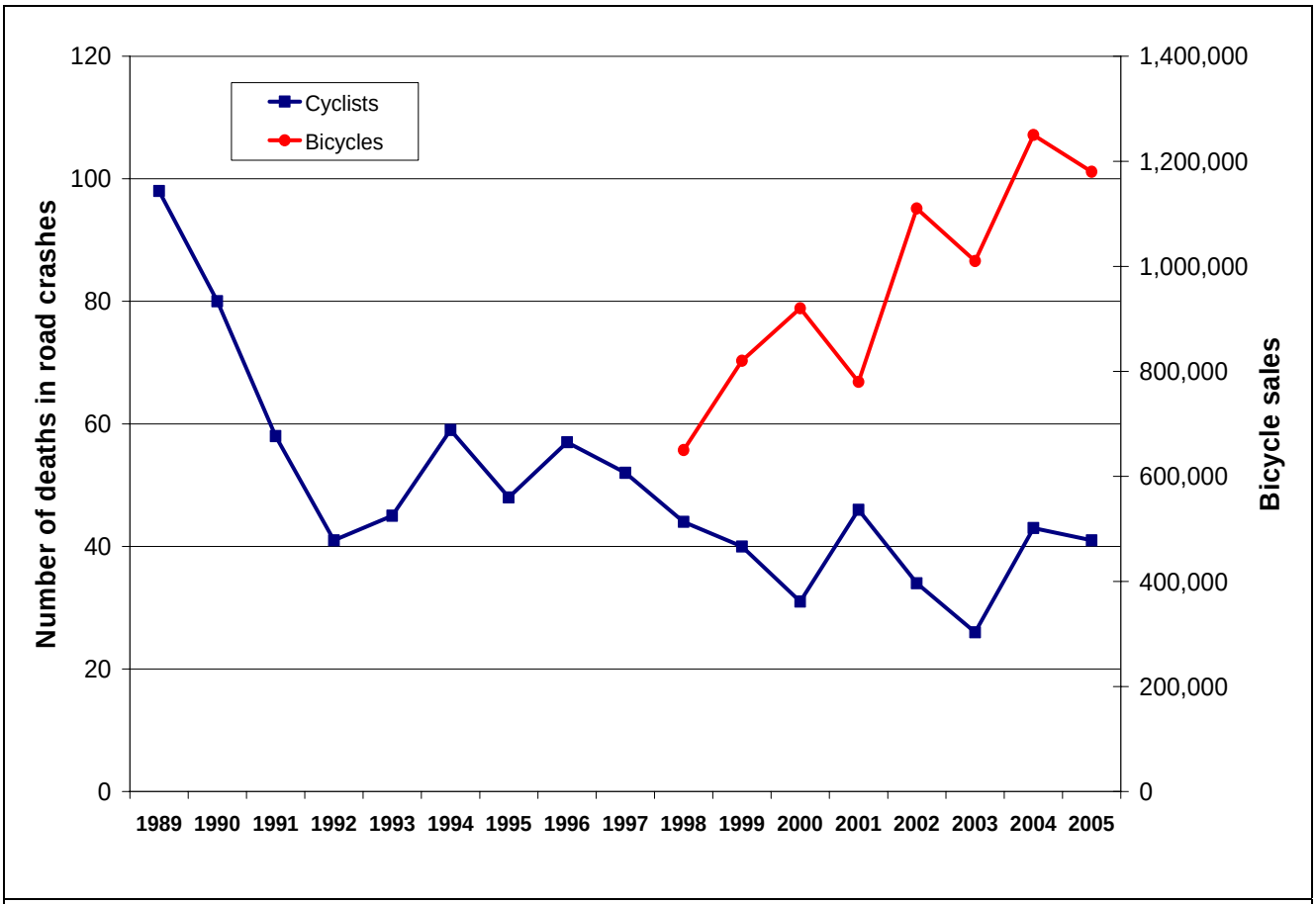

Figure 1. Cyclists killed in road crashes, 1989 to 2005, and annual bicycle sales, 1998 to 2005, Australia.[4,5]

A further 2004 ATSB report on cyclist safety based on data for 2000 and 2001, showed that cyclists account for about 11 per cent of persons seriously injured in road crashes each year.[6]

The value of a life

In a 2000 Report #102 *Road Crash Costs in Australia*, the Department of Transport and Regional Services, Bureau of Transport and Regional Economics, provides estimates of total costs associated with road crashes. According to the Report, when taking into account various associated costs such as ambulance costs; police costs; coronial costs; insurance costs; premature funeral costs; and any associated legal costs, the average cost of a road crash fatality was $1.5 million, a road crash serious injury $325,000 and a minor road crash injury $12,000 (in 1996 dollar values). It is estimated that costs associated with death and injuries would have significantly increased since 1996.

[4] *Deaths of cyclists due to road crashes.* ATSB Road Safety Report, July 2006.

[5] Australian Bureau of Statistics 2006, as cited with notes in *The Australian Bicycle Industry Report 2006*. Bicycle Industries Australia Ltd. www.bikeoz.com.au.

[6] Monograph 17. *Cycle Safety*. ATSB. October 2004.

Economists measure the value of a life through the calculation of the value of a statistical life (or VOSL). The term 'statistical life' is used because most safety policies aim to reduce the risk of death rather than to avert specific deaths. Most official VOSLs are based on an average value for death of a healthy person at age about 40 years.

There is no general VOSL in use in Australia when it comes to determining values for public policy. An article by Peter Abelson of Macquarie University on *The Value of Life and Health for Public Policy* in *'The Economic Record'*, Vol 79, Special Issue, June 2003, notes that "…studies indicate that most likely VOSL values are in the range of $A3.3-6.6 million." The article further notes that "…it appears that, for policy purposes in Australia, a VOSL of about $A2.5 million for a healthy prime-age individual would be an appropriate (conservative) value."

Changes in the market

There is evidence suggesting that cycling for commuting to work and school and for recreation in Australia is growing in popularity.[7]

The Exercise, Recreation and Sport Survey results for 2006 showed that cycling is the fourth most popular activity (10.1%) for people 15 years and older – after walking, aerobics/fitness and swimming – with a 17 per cent increase in participants since 2001.[8]

On census day 2006, Australian capital cities recorded a 28.9% increase in the number of people riding to work (bicycle only), compared with Census 2001.[9] Anecdotal evidence suggests that the rising cost of fuel in 2007 and 2008 has further increased the popularity of cycling.

As already mentioned, for the period 2002 - 2005 the number of bicycles sold in Australia averaged 1,133,000 per year and had been over one million in each of those four years.[10]

The precise number of bicycle helmets sold in Australia is not known. Import data supplied by Australian Customs Service indicates that about 370,000 helmets have been imported over the last three financial years. This figure is considered conservative given that annual bicycle sales are in excess of one million.

COMPLIANCE ISSUES

Compliance with the standard

In the period 2001 to 2009 the ACCC sought the withdrawal from sale of non-compliant bicycle helmets and received court enforceable undertakings from one supplier of bicycle helmets for breaches of the mandatory standard.

Ascertaining compliance with AS/NZS 2063:1996 is relatively straightforward. ACCC market surveillance and commissioned testing of bicycle helmets indicate a high level of compliance with AS/NZS 2063:1996.

However, ascertaining and enforcing compliance with the Snell B-95 Standard can be complicated.

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[7] *Deaths of cyclists due to road crashes.* ATSB Road Safety Report, July 2006.
[8] *Participation in Exercise, Recreation and Sport Survey 2006 Annual Report*. Australian Sports Commission. www.ausport.gov.au.
[9] Australian Bureau of Statistics 2006, as cited in *Cycling Fact Sheet. May 2008. Cycling to work on the increase*. www.cyclingpromotion.com.
[10] *The Australian Bicycle Industry Report 2006*. Bicycle Industries Australia Ltd. www.bikeoz.com.au.

The US Snell Memorial Foundation owns both the Snell B-95 Standard and the certification scheme by which its testers are licensed. Only one facility in California is licensed to test Snell helmets so all Snell helmets must be tested in the US. This affects both the ACCC as an enforcer of the Standard and suppliers who may elect to supply helmets which comply with the Snell B-95 Standard.

Some helmets have previously been collected in Australia and tested by the Snell Memorial Foundation. Snell has since indicated that it would not be involved in such a process unless it had full control of the information and responses generated.[11]

The ACCC may need to use test results to enforce compliance with the mandatory standard for bicycle helmets, or to publish the results of enforcement action, or to publicly register court enforceable undertakings that may include information about the test results. Restrictions on the use of test results produced by the Snell Memorial Foundation makes it difficult for the ACCC to administer and enforce the product safety regulation.

In regards to performance testing of Snell B-95 Standard certified helmets, an ATSB commissioned report found that;

> *On the basis of this lack of consistent performance when tested, the Snell B95 certified helmets are not capable of giving the level of protection expected from the requirements of the standard.*[12]

The views of the US Snell Memorial Foundation on the draft RIS were invited during the consultation period but no feedback was received.

Disparity between the Standard and state helmet use laws

There is disparity between the Standard and state helmet use laws.

A helmet can be supplied and sold in Australia if it meets the requirement of either AS/NZS 2063 as varied or Snell B-95 however state and territory road safety regulations require cyclists to use helmets compliant with (and in some cases Certified to) AS/NZS 2063 except in the Australian Capital Territory (ACT) where Snell B-95 certified helmets can also be worn.

Road safety laws are administered by the various state/territory road transport authorities. With the exception of the ACT these authorities declined to change their regulations for bicycle helmets to include the Snell B-95 Standard once it became an alternative to AS/NZS 2063 in the mandatory TPA product safety regulation, many citing concerns with Snell helmets raised by the 2004 Gibson and Cheung report.

The disparity between the mandatory TPA product safety regulation for bicycle helmets and state and territory helmet use laws may present a legal issue for suppliers. By supplying the Snell helmet to cyclists retailers may be at risk of breaching s.52 (of the Act) by representing (even by silence) to consumers that the Snell helmet is suitable and legal for use on the roads in States/Territories where Snell is not accepted.

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[11] Human Impact Engineering. Assessing the level of safety provided by the Snell B95 standard for bicycle helmets. 24 February 2004. Tom Gibson and Aaron Cheung.

[12] *Assessing the level of safety provided by the Snell B95 standard for bicycle helmets*. ATSB Road Safety Research Report CR220. Gibson, T and Cheung, A., Human Impact Engineering. June 2004.

Toy bicycle helmets

The current Standard does not apply to helmets for use as toys which cannot be reasonably mistaken for bicycle helmets. To adequately protect consumers, the Standard does, however, require that toy helmets which may be reasonably mistaken as bicycle helmets have a prescribed warning label indicating that the helmet is a toy.

The Australian Toy Association (ATA) raised an issue that toy suppliers may not be aware of the requirements to label toy helmets in these circumstances.

The ACCC consider it important to retain this safety requirement in the new regulation and will work with industry to raise awareness of the requirement. The matter will also be referred to the Standards Australia *CS-018 Technical Committee for toys.*

INTERNATIONAL STANDARDS

In the European Union (EU) the currently applicable standard is EN 1078:1997.

United States Consumer Product Safety Commission (CPSC) has created its own mandatory standard for all bicycle helmets sold in the United States. The Snell helmets comply with the CPSC Standard.

There is no ISO standard for bicycle helmets. An ISO standard exists for headforms for use in the testing of protective helmets.

International parity in product standards is an important objective. The Commonwealth Government has obligations to ensure that its regulations do not impose unnecessary barriers to trade by setting standards that make compliance by overseas manufacturers difficult.

However, under the terms of the Agreement on Technical Barriers to Trade, a government may regulate to protect human life and health, especially where it can be shown to be necessary to achieve reasonable levels of consumer protection.

Of the main overseas standards, including the European EN 1078 Standard, the Snell B-95 and the US Consumer Product Safety Commission (CPSC) standards were viewed in the 1999 Regulation Impact Statement *Protective Helmets for Pedal Cyclists* as being the closest to the Australian/New Zealand Standard.

The critical specifications that diverged from the Australian/New Zealand Standard were the location of the test line, provision of a load distribution test and certification process.

The key reasons for including Snell B-95 Standard in the mandatory standard in preference to the CPSC were that:[13]

- *The test line for the CPSC standard was too high to offer a comparable level of safety protection when compared with the Australian Standard.*
- *The Snell test line is sufficiently close to the Australian Standard test line to warrant it being considered capable of providing an overall level of safety that is equivalent to the Australian Standard, assuming other critical safety and performance specifications are adequately met*.

[13] Regulation Impact Statement *Protective Helmets for Pedal Cyclists*. Consumer Product Safety Standard (TPA 1974). Consumer Affairs Division, Department of Treasury. January 1999.

The ACCC is of the view that these reasons are still valid. The key differences between the Australian/New Zealand and the Snell B-95 Standard are shown in Table 1.

TABLE 1 Key differences between the Australian/New Zealand and Snell B-95 Standard[14,15]

Specification	Australian/New Zealand Standard	Snell B-95 Standard	Comment
Height of test line	Lower test line.	Higher test line. Very similar at front and sides, and higher across the rear.	The height of the test line is critical to the testing of helmet performance. Snell B-95 offers similar test line to AS/NZS 2063.
Load distribution test	Uses a kerbstone shaped anvil to test the ability of the helmet to spread a narrow impact across a given area. Precludes anvil touching the test head form.	LDT absent. Tests with kerbstone anvil but does not measure the distribution of the load, only the ability of the helmet to absorb impact.	Effectively excludes some helmets in Australia.
Sequence of testing	Impact prior to retention system tests.	Retention system prior to impact tests.	Impacts may diminish strength of retention system. It is not clear whether this is a real-life safety concern.
Certification process Quality Assurance	Audit of the Manufacturers Quality Plan. Type Testing and Batch Release Testing.	Certification Testing and Random Sample Testing.	Product compliance verification is critical to maintenance of consumer safety. It is apparent that there is a lack of ongoing RST of Snell B-95 certified helmets in the Australian market.

Due to an apparent lack of follow up routine sample testing to verify product compliance, the ACCC is of the opinion that the Snell B-95 Standard certified helmets supplied in Australia potentially do not provide an adequate level of protection to cyclists in the event of an accident. It is therefore proposed that the new mandatory standard does not adopt the Snell B-95 Standard. Product compliance verification is critical to ongoing consumer safety.

OBJECTIVE

The basis for the review of mandatory standards is to ensure that they remain reasonably necessary to prevent or reduce the risk of injury, are up to date, relevant and able to address an identified safety hazard.

IDENTIFICATION OF OPTIONS

Options to achieve the objective:

Option 1 Maintain the status quo – continue to have the Standard which is based on AS/NZS 2063:1996 and Snell B-95 Standard.

Option 2 Replace the current Standard with a new mandatory standard that is based only on the latest Australian/New Zealand Standard AS/NZS 2063:2008 *Bicycle helmets.*

The new Standard would continue to specify the applications from the current Standard. Toy helmets which may be reasonably mistaken as bicycle helmets would be required have a prescribed warning label indicating that the helmet is a toy. Helmets designed and constructed principally for use by cyclists engaged in BMX competition racing need not comply with provisions regarding ventilation openings or type testing.

[14] *RIS Protective Helmets for Pedal Cyclists*. Consumer Product Standard (TPA 1974). Consumer Affairs Division, Department of Treasury. January 1999.

[15] *Assessing the level of safety provided by the Snell B95 standard for bicycle helmets*. ATSB Road Safety Research Report CR220. Gibson, T and Cheung, A., Human Impact Engineering. June 2004.

Option 3 Replace the current Standard with a new mandatory standard that is based on the latest Australian/New Zealand Standard, AS/NZS 2063:2008 *Bicycle helmets,* and the existing Snell B-95 Standard.

Option 4 Repeal the Standard and rely on road traffic regulations in each state and territory and use ACCC market surveillance and testing regimes to ensure that helmets comply with AS/NZS 2063.

IMPACT ANALYSIS

The proposed options would affect consumers who use bicycle helmets, businesses involved in the supply of the products (manufacturers, hirers, importers, distributors and retailers), government (including consumer product regulators), and providers of emergency and hospital services.

Option 1 Maintain the status quo - continue to have the Standard which is based on AS/NZS 2063:1996 or Snell B-95 Standard.

Costs and benefits to consumers

The current level of safety provided by compliant helmets would be maintained. Consumers continue to benefit from the present choice of buying either AS/NZS 2063:1996 or Snell B-95 Standard compliant helmets.

The disparity between the law relating to the *supply* of goods (the Standard) and the laws on bicycle helmet *use* (road safety laws in the majority of States and Territories) means that consumers may purchase a helmet that they cannot legally use. Consumers are therefore exposed to the, albeit unlikely, possibility of liabilities accruing from non compliance with traffic regulations where they use Snell helmets on roads.

The Standard would continue to be a barrier to cheaper products not made to comply with the Standard maintaining some restrictions on competitive forces and therefore the present limitations on choice for consumers.

Costs and benefits to industry

Industry need take no additional action if its helmet is already compliant. They are aware of the requirements and no additional development costs or testing may be necessary. Based on a supplier's feedback, the estimated ongoing cost of AS/NZS 2063:1996 certification of product expressed as a percentage of retail purchase price was 1%.

The cost to industry of leaving the current bicycle helmet standard in place is that the existing mandatory standard is based on an outdated version of Australian/New Zealand Standard. This means that the mandatory standard for bicycle helmets may not adequately cover technological manufacturing and design developments in the market.

The disparity between the mandatory standard and state helmet use laws may expose suppliers to action under the misrepresentation provisions of the Act because the Snell compliant helmet is not legal for use on the roads in states and territories except for the ACT.

Suppliers seeking to comply with the Snell B-95 Standard may continue have samples tested overseas or alternatively test helmets to the Australian/New Zealand Standard. Local technical expertise in relation to the Snell B-95 Standard, which is primarily obtained through test laboratories and testing experience, is not available.

Costs and benefits to government

The annual cost of administering the current mandatory standard is approximately $60,000 per annum. Costs are incurred during activities such as responding to complaints and inquiries, consumer and supplier education, compliance and enforcement activities including market surveillance and purchasing and testing of bicycle helmets, evidence storage and handling, training, investigation and enforcement actions, access to the Australian/New Zealand Standard online and attendance at Standards Australia committee meetings and will occur irrespective of whether the current or updated standard is prescribed in the regulation.

In addition to these costs Standard Australia has foreshadowed substantial charges due annually to have them continue to develop and administer Product safety standards. The charges would be due even for years where standards are effectively not undergoing further development. Final charges have not been negotiated

Leaving the current Standard in place ensures that the costs of enforcement of the Standard by the ACCC remain known and reasonably consistent. However, compliance testing for Snell B-95 Standard has to be conducted overseas, thus imposing additional costs and more importantly, time delay.

The use of bicycle helmets meeting either AS/NZS 2063:1996 or Snell B-95 is concurrent with reduced cyclist injuries and deaths and associated medical costs.

Difficulties with enforcing the Standard due to an inability to freely use Snell B-95 testing data would continue. All helmets the subject of enforcement action would have to be tested at the US Snell Memorial Foundation facility in California as well as to AS/NZS 2063:2008. Instigating a potential recall or withdrawal from sale could potentially be delayed as a result.

<u>Option 2</u> Replace the current mandatory standard with a new mandatory standard that is based only on the latest Australian/New Zealand Standard, AS/NZS 2063:2008 *Bicycle helmets.*

Costs and benefits to consumers

Cyclists using public roads will be protected from unwittingly breaching road safety regulations as all bicycle helmets legitimately supplied in Australia will comply with these requirements.

The adoption of only the latest Australian/New Zealand Standard 2063:2008 in the Standard will see the cost of bicycle helmets continue to include a premium to cover the cost of testing for compliance with the mandatory standards.

The Standard would continue to be a barrier to the supply of bicycle helmets not made to comply with the mandatory product safety standards, maintaining some restrictions on competitive forces and therefore the present limitations on choice for consumers.

Where bicycle helmets in the market comply with the updated mandatory standard, consumers can expect an enhanced level, even if incremental, of protection from injury from bicycle helmets in the event of a cycling accident.

The withdrawal of the Snell B-95 Standard certified bicycle helmets from the Australian market consequential to this option is likely to impact as a minimal reduction in the choice of bicycle helmets and the slight possibility of reduced access to some cheaper models. This preliminary position is based on the likelihood that there a few Snell B-95 Standard certified bicycle helmets supplied in Australia.

Costs and benefits to industry

Industry would continue to incur compliance costs including testing costs at a similar levels to those imposed by testing to AS/NZS 2063:1996.

A supplier's estimated ongoing cost of AS/NZS 2063:2008 certification of product expressed as a percentage of retail purchase price was 1%.

Smaller suppliers may continue to find it difficult to enter the market with cheaper products as testing to mandatory standards can be a significant cost component when dealing with small quantities of bicycle helmets.

Suppliers would find the proposed mandatory standard simpler to comply with as it would reference only one standard, the latest version of AS/NZS 2063.

The risk of suppliers breaching the misrepresentation provisions of the Act for representing to consumers that the Snell helmet is suitable and legal for use on the roads in states and territories where Snell is not accepted would be eliminated.

Suppliers, through their industry associations, have contributed to the development of the Australian/New Zealand Standard for bicycle helmets. It would be beneficial to both industry and consumers to adopt the AS/NZS 2063:2008 as the mandatory standard so that suppliers can utilise the latest Australian/New Zealand Standard and consumers can benefit from the corresponding, even if incremental, improvements in safety.

Costs and benefits to government

The annual cost of administering the current mandatory standard is approximately $60,000. These costs are expected to rise by approximately $10,000 - $15,000 per annum.

There are benefits to government in ensuring that the standard of personal consumer safety is maintained. Enforcement of the regulation will become much more efficient increasing the likelihood that enforcement will act as a deterrent to the supply of non compliant bicycle helmets resulting in additional savings to public health budgets by reducing some medical and hospitalisation costs for accidents associated with cycling bicycle helmets that may not have provided an adequate level of protection.

The improved construction, performance and labelling requirements in the latest Australian/New Zealand Standard may also result in a reduction in some medical and hospitalisation costs for bicycle accidents.

<u>Option 3</u> Replace the current mandatory standard with a new mandatory standard that is based on the latest Australian/New Zealand Standard, AS/NZS 2063:2008 *Bicycle helmets* and the existing Snell B-95 Standard.

Costs and benefits to consumers

The current level of safety provided by compliant helmets would be improved. Consumers would not be in a position to make decisions on the relative safety of a helmet, and may be mislead to the effect that a Snell compliant helmet is suitable and legal for use on the roads in all States/Territories (except ACT).

If both AS/NZS 2063 and Snell labelled helmets are available on the market, the apparent lack of follow up routine sample testing in Australia involving helmets claiming compliance to the Snell Standard, means that consumers might rely on a Snell labelled helmet which may

not comply to the Snell Standard or provide an adequate level of protection to cyclists in the event of an accident.

The disparity between the law relating to the *supply* of goods (the Standard) and the laws on bicycle helmet *use* (road safety laws in the majority of States and Territories) means that consumers may purchase a helmet that they cannot legally use. Consumers are therefore exposed to the possibility of liabilities accruing from non compliance with traffic regulations where they use Snell helmets on roads.

The Standard would continue to be a barrier to cheaper products not made to comply with the mandatory product safety standards maintaining some restrictions on competitive forces and therefore the present limitations on choice for consumers.

The adoption of the latest Australian/New Zealand Standard for bicycle helmets as mandatory will see the purchase price of helmets continue to include a premium to cover the cost of product development and testing for compliance with the mandatory standards. These testing costs are likely to be passed on to the consumer.

Consumer continue to have a choice to buy either AS/NZS 2063:2008 or Snell B-95 Standard certified helmets for use. This benefit, however, can only be realised in the ACT.

Consumers will benefit from the improvements in the construction, performance and marking requirements for bicycle helmets if the latest version of the AS/NZS 2063 is mandated.

Costs and benefits to industry

With the adoption of only the latest Australian/New Zealand Standard for bicycle helmets as mandatory, product prices would continue to include a premium to cover the cost of compliance.

Smaller suppliers may continue to find it difficult to enter the market with cheaper products as testing to mandatory standards can be a significant cost component when dealing with small quantities of bicycle helmets.

Suppliers will continue to be at risk of breaching the TPA. By supplying the Snell helmet outside the ACT retailers may be at risk of breaching s.52, s53 (of the Act) by representing (even by silence) to consumers that the Snell helmet is suitable and legal for use on the roads in States/Territories where Snell is not accepted

Suppliers, through their industry associations, have contributed to the development of the Australian/New Zealand Standard for bicycle helmets. The adoption of the new Australian/New Zealand Standard would allow industry to utilise the latest Standard. Based on a supplier's feedback, the estimated ongoing cost of AS/NZS 2063:1996 certification of product expressed as a percentage of retail purchase price was 1%.

Suppliers seeking to comply with the Snell B-95 Standard, continue have samples tested overseas, thus creating delay and placing a commercial burden on suppliers. Local technical expertise in relation to the Snell B-95 Standard, which is primarily obtained through test laboratories and testing experience, is not available.

Costs and benefits to government

The annual cost of administering the current Standard is approximately $60,000. These costs are expected to rise by approximately $10,000 - $15,000 per annum.

Difficulties with enforcing the Standard due to an inability to freely use Snell B-95 testing data would continue. All helmets the subject of enforcement action would have to be tested at the US Snell Memorial Foundation facility in California as well as to AS/NZS 2063:2008. Instigating a potential recall or withdrawal from sale could potentially be delayed considerably as a result.

Less efficient enforcement could result in a lower deterrent to the supply of unsafe helmets and a loss of potential savings to public health budgets from reduced medical and hospitalisation costs for accidents.

The improved construction, performance and labelling requirements in the latest Australian/New Zealand Standard may also result in a reduction in some medical and hospitalisation costs for bicycle accidents.

<u>Option 4</u> Repeal the Standard and rely on road traffic regulations in each state and territory and use ACCC market surveillance and testing regimes to ensure that helmets comply with AS/NZS 2063

Costs and benefits to consumers

The onus for selecting bicycle helmets with appropriate levels of safety would shift substantially to consumers. In the absence of a mandatory standard it would be legal to supply bicycle helmets that did not comply with the Australian/New Zealand Standard or any other standard. Consumers may be less certain as to whether bicycle helmets on sale provide an adequate level of safety. Notwithstanding that road traffic regulations in each state and territory require cyclists to wear helmets that are marked to show compliance with AS/NZS 2063, except in ACT where Snell B-95 certified helmets can also be worn, consumers may be tempted to purchase cheaper or potentially substandard helmets that have not met any marking and/or performance standards. It is likely that the road traffic regulations alone would not be fully effective in persuading consumers to purchase bicycle helmets complying with the Australian/New Zealand Standard because there may not be full or effective enforcement of road rules requiring bicycle helmets to meet the Australian/New Zealand Standard (or Snell Standard in the ACT).

Bicycle helmets without recommended safety features, nor tested for performance may more readily enter the market and attract consumers through cheaper prices, potentially leading to higher rates of death and injury associated with those products. The cost is difficult to quantify due to uncertainties about the precise effect of the safety standard, but if the injury rate increased it would result in increased medical and personal costs which may be shared with the public hospital system and the broader community through increased health insurance premiums.

Conservatively, at least one additional death and several injuries requiring hospitalisation and ongoing treatment per year might be expected to result from a lowering of safety standards. Consumers as taxpayers would bear most of this expense.

The Act creates a remedy for consumers who suffer injury, loss or damage because of an unsafe good. The Act deals with defective goods by providing a series of statutory rights of

action against the manufacturer, in favour of persons suffering injury, loss or damage caused by the dangerous and or defective goods.

The basis of liability or the cause of action is that there is a defect in the goods and a person suffers injury as a result of that defect. Adequately proving that a bicycle helmet was defective after an accident would be particularly difficult and it is considered that this deterrent is insufficient to ensure suppliers of bicycle helmets supply goods that comply with minimum recommended safety standards.

Product liability and negligence claims can also be financially costly. Legal expenses reduce the ability for many consumers to access compensation for injuries received.

The removal of regulations on performance characteristics of bicycle helmets would increase consumer choice and price competition, possibly reducing prices.

Consumers are likely to benefit from safe use information concerning bicycle helmets where a targeted campaign would highlight the hazards associated with the use (and misuse) of bicycle helmets.

Without timely reinforcement, the effectiveness of a road safety campaign may diminish over time to the extent that the warning messages do not reach future users of bicycle helmets.

Consumer education might be a useful adjunct to other options, but is not regarded as a viable stand-alone option. This is because the technical nature of bicycle helmet safety mechanisms is such that it is unlikely that an average consumer would be able to reliably assess the safety of a bicycle helmet.

Costs and benefits to industry

Reduced regulation would benefit industry where suppliers are free to select products on the basis of perceived commercial potential and compete freely in the market.

The potential widening of the range of products that could be legally supplied in the market may assist smaller suppliers to enter the market.

Product liability laws may act as a deterrent to suppliers who supply defective goods however adequately proving that a bicycle helmet was defective after an accident would be particularly difficult and it is considered that this deterrent is insufficient to ensure suppliers of bicycle helmets supply goods that comply with minimum recommended safety standards.

Section 74D of the Act regarding merchantable quality may act as a deterrent to the supply of faulty or unsafe goods.

A regular ACCC market surveillance and testing regime ascertaining compliance with AS/NZS 2063 may deter suppliers from supplying non compliant helmets.

Costs and benefits to government

The onus for enforcing compliance with AS/NZS 2063 would shift substantially to state and territory traffic regulators. Road safety agencies including enforcers may have less confidence that bicycle helmets complied with road rules.

Increased injuries associated with bicycle helmets that do not comply with mandatory safety standards or industry codes would likely result in increased demand for hospital services. The

government would effectively share in the increased costs of medical treatment for consumers.

Reduced regulation would eliminate the need for the ACCC to maintain and enforce the mandatory standard for bicycle helmets however education campaigns advising consumers on the safe selection and use of helmets would need to be enhanced as instructions for use would no longer be required to be supplied with the helmets.

Enforcement actions would still be undertaken where ACCC market surveillance and testing showed that claims of compliance with the AS/NZS 2063 were not substantiated. In the short term, the ACCC would not be obliged to continue to contribute to the maintenance and development of the Australian/New Zealand Standard AS/NZS 2063. It is estimated that the costs associated with producing a modest media campaign and related education materials including publications would be in excess of $85,000. As increased education obligations would counter some of the savings from reduced standard administration costs the estimated savings over the present regulation are approximately $20,000 per year.

CONCLUSION AND RECOMMENDED OPTION

Evidence of past market behaviour indicates that the industry self-regulation option may not be effective in excluding from the market bicycle helmets that do not meet safety standards.

Whilst it is likely that some suppliers would continue to supply products that comply with the Australian/New Zealand Standard or Snell B-95 Standard, suppliers would be able to supply cheaper, products without reference to any reputable standard in order to maintain a share of the market. The costs of deregulation would be borne consumers and the community in dealing with the effects of increased product-related accidents, resulting from bicycle helmets that do not provide a reasonable level of safety.

Presently, the Standard for bicycle helmets requires compliance with either AS/NZS 2063:1996 (with variations) or the Snell B-95 Standard. It is proposed that a new Standard be declared referencing only the 2008 version of AS/NZS 2063 as outlined in Option 2.

Variation to Australian/New Zealand Standard, AS/NZS 2063:2008

The Act allows the Minister for Competition Policy and Consumer Affairs to vary the requirements of an Australian/New Zealand Standard. Whilst it is proposed that AS/NZS 2063:2008 be adopted as the mandatory consumer product safety standard, it is also proposed that AS/NZS 2063:2008 be varied to (see Attachment B for more detail):

- Continue to specify the application from the current Standard;
- Exclude toy helmets from the proposed mandatory safety standard, but including specification for labelling of toy helmets which may be reasonably mistaken for protective helmets for pedal cyclists; and
- Address the issue of BMX helmets.

CONSULTATION

A draft of this RIS proposing the new Standard for bicycle helmets was circulated for consideration and comment to stakeholders including:

cyclists

bicycle organisations

injury prevention agencies

state and territory consumer affairs/fair trading agencies

bicycle helmet manufacturers, importers and retailers

test laboratories

Standards Australia Technical Committee CS-014.

Feedback received was assessed to aid in determining whether the proposed mandatory safety standard is necessary to manage the hazards identified, as well as determining those relevant clauses of the Australian/New Zealand Standard that should be mandated. The recommendations have been considered and taken into account in the finalisation of the RIS process. (See Attachment A.)

IMPLEMENTATION

Following consideration of consultation outcomes, the new mandatory standard would be implemented by way of Regulations as soon as possible.

Industry will require time to adjust to the new requirements of the mandatory standard for bicycle helmets. To comply with the new requirements, suppliers will need to clear existing stocks not produced in accordance with the new requirements. It is intended that a transition period be provided for suppliers to comply with the new requirements of the revised mandatory standard. Accordingly, it is proposed that all bicycle helmets supplied after the introduction of the revised standard (approximately December 2010) would be required to comply only with the latest AS/NZS 2063:2008 (with variations).

MONITORING AND REVIEW

The new mandatory standard will be monitored through feedback from industry, consumers, injury analysts and standards enforcement authorities to ensure the new standard does not cause any unnecessary disruption to the market.

It is government policy to periodically review mandatory standards to ensure they remain current and relevant to market needs. The new standard will remain in force until they are subject to another review in approximately 5 years or sooner in the event of changed circumstances, such as when the relevant Australian/New Zealand source standard is amended.

ATTACHMENT A

Summary of comment received in the consultation period for proposed mandatory standards for bicycle helmets.

ISSUE	COMMENT	ACCC RESPONSE
Option 1: Maintain status quo	**Manufacturer and importer** (We) do not regard this option as a viable one.	Noted and agreed.
Option 2: Replace the current Standard with a new mandatory standard that is based only on the latest Australian/New Zealand Standard	**Manufacturer** In conclusion, we support option 2 of the RIS and strongly discourage industry self regulation as we believe this would considerably lower the level of protection offered by helmets in the marketplace.	Noted and agreed.
	Importer and retailer In our opinion, the option to replace the current Standard with a new mandatory standard that is based only on the latest Australian/New Zealand Standard AS/NZS 2063:2008 (option 2) was considered as providing the greatest improvement to consumer safety with minimal cost increase. In fact, we consider that such revision of the mandatory standard for bicycle helmets to the most current version and the withdrawn of the Snell B-95 Standard will continue to ensure safety and facilitate ACCC's enforcement of the safety regulations without reliance on international data.	Noted and agreed.
	State consumer affair agency (We have) considered the RIS for Bicycle Helmets and support the adoption of option 2.	Noted and agreed.
	Manufacturer and importer This is the preferred option for (us). The company is already positioning itself to meet the requirements of the new standard.	Noted and agreed.

ISSUE	COMMENT	ACCC RESPONSE
	State consumer affair agency (We) did review and support the RIS.	Noted and agreed.
Option 3: Replace the current Standard with a new mandatory standard that is based on the latest Australian/New Zealand Standard, and the existing Snell B-95 Standard	**Manufacturer and importer** (We do) not regard this option as a viable option and consequently do not support it.	Noted and agreed.
Option 4: Repeal the Standard and rely on road traffic regulations in each state and territory and use ACCC market surveillance and testing regimes to ensure that helmets comply with AS/NZS 2063	**Manufacturer and importer** (We) strongly oppose this option on the grounds that it would be extremely difficult for the consumer to choose a helmet with the appropriate level of safety performance.	Noted and agreed.
Costs to comply with current or new mandatory standard	**Manufacturer** It is our estimation that the ongoing cost of AS2063 certification (either 1996 or 2008) of our products expressed as a percentage of the retail purchase price is in the region of 1%. This cost, in our view, is very reasonable when considering the high levels of quality/safety assurance that full certification offers.	Noted.
	Manufacturer and importer Apart from the initial costs described above incurred in preparing to meet the new standard, (we) do not see any increase in ongoing costs in meeting the new standard as most current practices implemented under the old standard will not change.	Noted.

ISSUE	COMMENT	ACCC RESPONSE
Toys and BMX helmets	**Importer and retailer** We believe that excluding toys helmets from the proposed mandatory safety standard and addressing the issue of BMX helmets will be beneficial to the cycle industry and the consumers.	Noted and agreed.
	Australian Toy Association The SA (AS/NZS 2063) does not include toys. Yet the regulation (draft mandatory standard) seeks to specifically exclude them (toys) and in doing so creates a requirement for toys i.e. a warning label stating that this is a toy. This will not be obvious to toy suppliers as the draft mandatory standard is not about toys. (We) wonder if it wouldn't be preferable to specifically regulate 4.17 of the AS/NZO 8124 Part 1 (toy standard) as a new Consumer Protection Notice??	The ACCC views that to adequately protect consumers Regulations must apply to toys which may be reasonably mistaken as bicycle helmets and do not have prescribed labelling. To be raised for the Standards Australia CS-018 Technical Committee for toys.
International standards	**State Kidsafe** Compare the latest Australian Standard AS/NZS 2063:2008 – bicycle helmets to the European Standard. A comparison of the standards will provide a partial indicator of the effectiveness in reducing injury to cyclists.	Noted and addressed. After analysing and comparing the main overseas standards, including the European EN 1078 Standard, the Snell B-95 and US CPSC standards were viewed as being the closest. Thereafter, the reasons for adopting only the AS/NZS 2063:2008 were provided. Refer to International Standards section (page 8).
	State Department of Transport Analysis of standards and the certification processes used in foreign countries be conducted.	See above.

ISSUE	COMMENT	ACCC RESPONSE
	State Cyclists' Action Group Imposing the Australian Standard AS/NZS 2063:2008 – bicycle helmets as the only acceptable standard ignores the quality of products and certification processes available in other countries, and discourages imports of high-quality bicycle helmets that offer the appropriate protection.	See above. Requiring that helmets comply with AS/NZS 2063:2008 does not restrict suppliers from supplying any brand of helmet. The ACCC understands from submissions received that suppliers of helmets made under other regimes have at an additional cost tested to meet AS/NZS 2063:2008.
Testing	**State Cyclists' Action Group** Helmets should be tested for multiple impact – the current standard does not test for multiple impacts	Noted. To be raised for consideration by the Standards Australia Committee.
	State Cyclists' Action Group Helmets need to be highly conspicuous and this should be considered in the mandatory safety standard as it is a very important primary safety feature	Noted. The issue of conspicuousness of helmets to be raised for consideration by the Standards Australia Committee.

ISSUE	COMMENT	ACCC RESPONSE
Angular acceleration	**Cyclists Rights Action Group (CRAG)** Wearing of a bicycle helmet by a cyclist allegedly increases angular acceleration in the event of an accident, and that angular acceleration is a major cause of brain injury, in particular diffuse axonal injury.	Brain injuries, as well as facial, head and fatal injuries resulting from bicycle accidents are of concern to the ACCC. The main purpose of the Standard is to set minimum design, construction, performance, and marking requirements as are reasonably necessary to prevent or reduce the risk of injury as a result of bicycle related incidents. As highlighted in the RIS, there is evidence that cyclists are subject to a greater risk of serious head injury if they are involved in an accident and are not wearing a helmet that meets relevant safety standards. Helmets offer protection to the head and brain reducing the risk of fatal injuries. In the absence of any standards that test for angular acceleration, the ACCC views that referencing the AS/NZS 2063:2008 in the new Standard (option 2) is necessary to ensure that helmets supplied in Australia market comply with minimum safety standards.

ISSUE	COMMENT	ACCC RESPONSE
Transition period	**Manufacturer and importer** (We) agree with the time line of August 2010 for the introduction of the new standard. The potential for lost sales will be greatly reduced by acceptance of this time line. Introduction before this date could result in lost sales of helmets requiring modification. The cost of this is currently estimated to be approximately $300,000. (We) do not see any case for the transition period to be extended beyond August 2010. An extension would mean that those diligent companies who have prepared and organised in good time will be penalised in comparison to those companies who for whatever reasons are unprepared.	Noted but transition period reviewed. See below.
	Manufacturer The approximate date of introduction of August of 2010 may be too soon as suppliers need to get all existing product redesigned, type tested, and manufactured. Additionally, stocks of product manufactured to the existing standard needs to be sold through the sales and distribution networks. We suggest that August of 2011 would be more appropriate to prevent problems particularly at the retail level.	Noted but not agreed. The ACCC proposes a transition period of approximately twelve months. Following this phase in period, suppliers would be required to comply with only the latest AS/NZS 2063:2008 with variations (about December 2010).

ATTACHMENT B

Variation to Australian/New Zealand Standard, AS/NZS 2063:2008

Omit clause 1 of AS/NZS 2063:2008 and replace it with the following clause:

"1 SCOPE

(1) This Standard applies to protective helmets for pedal cyclists.

(2) However, this Standard does not apply to the following helmets:

(a) protective helmets of a size too small to be reasonably fitted to Headform AA defined in Australian/New Zealand Standard AS/NZS 2512.1:2009 published by the Standards Association of Australia on 7 April 2009;

(b) helmets for use as toys which cannot be reasonably mistaken for protective helmets for pedal cyclists;

(c) helmets for use as toys which may be reasonably mistaken for protective helmets for pedal cyclists, if the words *Warning: toy helmet only — do not use as safety headgear* are marked clearly and legibly in a conspicuous position on:

(i) the helmet or on a label attached to the helmet at the time of supply to the consumer; and

(ii) the principal outer display face of any packaging in which the helmet is supplied to the consumer;

with the word *Warning* in capital letters not less than 5 mm high, and the remaining words in letters not less than 2.5 mm high;

(d) helmets (except BMX helmets) designed and constructed principally for use by cyclists engaged in competitive racing, if the words *Warning: racing headgear only — inadequate impact protection for normal road use* are marked clearly and legibly in a conspicuous position on:

(i) the helmet or on a label attached to the helmet at the time of supply to the consumer; and

(ii) the principal outer display face of any packaging in which the helmet is supplied to the consumer;

with the word *Warning* in capital letters not less than 5 mm high, and the remaining words in letters not less than 2.5 mm high."

To maintain the variation from the current mandatory standard for BMX helmets, it is proposed to insert the following clause after clause 5.5 of AS/NZS 2063:2008:

“5.6 BMX Helmets: Helmets designed and constructed principally for use by cyclists engaged in BMX competition racing need not comply with provisions regarding ventilation openings or type testing.”