Motorcycle Helmet Standards: A National Appraisal

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The further we delve into the problems with motorcycle helmet standards, regulations, compliance and enforcement, the more of a dog's breakfast of error, misinterpretation, misdirection, confusion and misfortune it becomes.

Following concern expressed by the Australian Motorcycle Council (AMC) about the certification process and validity of compliance with the Australian Standard AS 1698-1988 for motorcycle helmets last year, MRASA researched the SA Road Traffic Act and associated regulations and reported our concerns in the March and June 2012 issues of *Centrestand*.

The situation continues to escalate as the AMC's motorcycle bodies in other states investigate their own legislation and enforcement protocols and discover errors and significant inconsistencies throughout the application of the standards, predictably leading to consequences ranging from fines for riding with 'non-compliant' helmets to, possibly, severe injury or worse as the result of using 'compliant' helmets.

Stickers on helmets have become a substitute for compliance with the law, yet the stickers themselves are unreliable indicators of compliance. There is not one helmet on the Australian market that is certified as being in compliance with the Commonwealth mandatory product safety standard.

This has led the AMC and its member bodies to a complete loss of confidence in Australian Standards Conformance and Technical Infrastructure systems with regard to helmets.

We cannot rely upon labels on helmets to tell us whether a helmet will allow any of us to comply with the law. Yet it is riders who receive fines and licence demerit points for not complying with the law, and who may suffer harm when helmets prove to be unfit for their purpose.

This makes riders responsible for defective certification.

The problem began in 2004, when the certification of helmets was privatised. In December 2003 the Quality Assurance Services (QAS) division of Standards Australia was sold into SAI Global by public float on the ASX. As part of that sale, SAI Global acquired the "five ticks" trademark, which then represented a private company and hence had no official or "government" status.

SAI Global also arranged a publishing agreement with Standards Australia to publish standards. This association has lead some to believe SAI Global has official status in respect of standards compliance.

Since 2004 a number of certification companies – called Conformance Assessment Bodies or CABs – have entered the market. This means that, looking at helmets on the street, we may see SAI Global, BSI (two label versions, one from Britain as on the

AGV Rossi Face helmets, one local), TüV Rheinland, PasMark, ConformanceMark or Global-Mark.

Confusion has increased since the publication by Standards Australia in 2006 of AS/NZS 1698:2006, a completely revised voluntary standard for motorcycle helmets. This was an entirely different standard with different test methods and different head forms to that of AS 1698-1988. It was not "an amendment" as Standards Australia asserted. It has still not been endorsed by the Commonwealth as a suitable standard for helmets for sale in Australia.

Nevertheless, helmets on the Australian market have been certified to this new voluntary standard as a result of initiatives of certification bodies. This is despite consumer law continuing to require that helmets comply with AS 1698-1988.

As a result, riders have been buying helmets that might or might not comply with consumer law. Unless a helmet is tested against AS 1698-1988, we just don't know if it complies. Due to the differences in the standards, some will and some won't. A well-constructed helmet might pass both standards, but there's no certainty.

Although we don't know if there's a safety problem, we do know that compliance with either standard cannot be determined by simply observing labels. If sections of either standard are treated in a cavalier manner for labels (and it is obvious that they have been), we have little assurance that more complex aspects of testing have been correctly adhered to.

Simply put, there are serious doubts as to the reliability of certification of helmets in Australia.

The mandatory standard required of helmets remains AS 1698-1988 in the form as referenced in Consumer Protection Notice (CPN) No.9 of 1990 which, among other things, removes Clause 8(g) from the mandatory standard, yet the voluntary standard AS/NZS 1698:2006 includes the requirement of Clause 8(g) for "the certification mark". There is no "mark" legally able to fulfil Clause 8(g).

CPN No.9 is the Commonwealth legislative instrument that defines the mandatory product safety standard for motorcycle helmets. The Australian Consumer Law (ACL) is administered identically in every State and Territory by local Departments of Fair Trading or Consumer Affairs. The ACL requires that all helmets comply with CPN No.9.

The mandatory standard is based on Australian Standard 1698-1988 *Protective Helmets for Vehicle Users*. AS 1698-1988 is a voluntary standard except for those sections specifically referred to in the mandatory standard. These sections include technical performance testing, construction, labelling, visor requirements and user instructions (such as avoiding potential damage caused by petrol, adhesives and so forth).

Yet, after testing and certification by a group of local companies, nobody seems to have noticed that, contrary to consumer law, the wrong standard is being applied and no helmet is in compliance with the "mark" of Clause 8(g).

This means the marks on helmets have no meaning in consumer law.

A further complicating factor is that individual States and Territories can vary their road rules in respect of the standard. The outcome of this, for example, is that road rules in the NT and Qld that require "compliance with" the standard, and road rules in the other States and Territories that require certain other marks on helmets in addition to "compliance with" the standard, are impossible to comply with.

A paradox indeed, and where a major part of the problem stems from.

Put another way, different road authorities have different requirements in their road rules for helmets to bear particular "marks", which may be the same as that formerly required in Clause 8(g) of AS 1698-1988, be different (such as stipulating a specific mark), or even require both.

In another example closer to home, SA requires "the certification mark" of the Standards Association of Australia and WA requires "a sticker issued by Standards Australia". In other words, SA requires the mark identified in Clause 8(g) of AS 1698-1988 (which no longer exists), while WA requires a completely different mark, yet NSW and Victoria specify a limited set of privately owned commercial marks that are neither of these.

This has reduced the entire subject of helmets to stickers. Without the "right" sticker according to local police enforcement, you risk getting a ticket. The market for motorcycle helmets is now controlled by stickers. A rider now buys a sticker with a helmet attached.

While SA changed its road rules in November 2007 to adopt AS/NZS 1698:2006, this remains in conflict with consumer law, which continues to require AS 1698-1988.

On January 1 2011, South Australia, along with all other States and Territories, adopted the *Australian Consumer Law*, referenced in the SA Fair Trading Act 1987 (updated). This references through to Section 194 of the Australian Consumer Law at Schedule 2 Volume 3 of the Australian Consumer and Competition Act (the updated Trade Practices Act), so there is no doubt that helmets offered for sale in SA must comply with AS 1698-1988 as referenced in Consumer Protection Notice No.9.

So, in SA, consumer law demands one standard, while road rules require a different one.

However, there is no helmet available on the Australian market that bears the mark (or "sticker") required by South Australian road rules [*SA Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999*]. Road Rule 270 requires an "approved motorbike helmet", and is linked to Regulation 38 of the SA *Road Traffic (Miscellaneous) Regulations 1999*, which carry the definitions.

Hence, strict compliance with SA road rules is impossible, irrespective of which standard is declared on a helmet label.

The situation in SA is replicated throughout Australia, with bizarre differences that are out of step with consumer law and impossible for a rider to comply with, as seen here:

NT: Helmets must comply with AS/NZS 1698:2006 (from 1 Jan 2012).
Qld: Helmets must comply with AS 1698–1988.
NSW: Helmets must comply with AS/NZS 1698:2006 and bear a sticker from a JAS-ANZ accredited certifier (5 Feb 2010, 5 Nov 2010).
ACT: Helmets must bear the certification trade mark of which the Standards Association of Australia is the registered proprietor together with the figures "1698" (reconfirmed 2009).
Vic: Helmets must be marked with an official standards mark, comply with AS/NZS 1698:2006 and bear a JAS-ANZ certifier sticker (1 July 2012).
Tas: Helmets must comply with AS/NZS 1698 (NB: no year) and bear the Australian Standards Mark (1 July 2012).
SA: Helmets must be manufactured, tested and marked in accordance with AS 1698:2006 and bear the certification mark of the Standards Association of Australia (28 Nov 2007).
WA: Helmets must comply with AS/NZS 1698:2006 and carry a sticker issued by Standards Australia (14 Dec 2007).

There's a growing undercurrent of concern in the riding community about where things are with standards and quality assurance, not just with helmets, but with other standards that affect our safety on the road.

The AMC (and, of course, MRASA) is focussing intensively on this situation, and *Centrestand* and our website will keep you informed of progress.

We would like to follow through with any questions or concerns you have on this matter, for if you have them others will too, and the more information we can share around the better we will be able to resolve the problem. Perhaps we can set up an FAQ section if we get enough queries, so please write in or email us.

(With many thanks to Guy Stanford of the AMC Helmets Committee for assistance with this article…Peter Mount)