



11 September 2012

The Honourable Scott Emerson MP
Queensland Minister for Transport and Main Roads
Queensland Parliament House
George Street
BRISBANE QLD 4000

Dear Minister

Re: Issues on Motorcycle Helmets

It has come to the attention of the Motorcycle Riders Association Queensland (MRAQ), by virtue of considerable research done by our affiliate body in NSW and by evidence of spurious traffic infringement notices, that there are a number of major problems with the various pieces of both State and Commonwealth Government legislation relating to the certification and use of motorcycle helmets.

As a consequence of examining the current situation, it appears that both Commonwealth law and State law on the certification and mandatory use of motorcycle helmets are critically flawed either in their wording or their enforcement.

For initial clarification, the laws that we are referring to in each instance are:

- (i) Commonwealth Consumer Protection Notice No.9 on the sale of motorcycle helmets (attached);
- (ii) State Road Rules 270 on the mandatory use of motorcycle helmets.

The problems are in the certification process of helmets for sale as required by Commonwealth Consumer Law, and then in the use of this law to qualify what is an approved helmet under State Road Rules, as well as, the wording of the Road Rules and the enforcement of same.

It appears that the Commonwealth Consumer Law is flawed in its reliance on incorrect or unreliable certification markings and that the State road rules relies on these Commonwealth laws to qualify what is an approved item. Additionally, the State Road Rules are not worded in such a manner so as to accurately relay how an approved helmet can be identified.

To attempt to satisfactorily clarify the problems please refer to the attached article taken from the roadrider.com.au website which should explain the problem in its entirety.

This issue is further complicated by the enforcement of what is a flawed road rule and also by the interpretation of the rules.

Queensland Transport Operations (Road Use Management-Road Rules) Regulation 2009 Part 16 – 270 states “(1) The rider of a motorbike that is moving, or is stationary but not parked, must- (a) wear an approved motorbike helmet securely fitted and fastened on the

rider's head " and "(3) In this section- **approved motorbike helmet** means a helmet that complies with - (a) AS 1698-1988; or (b) another standard the chief executive considers is at least equal to that standard."

This Road Rule only requires the use of a helmet that "complies" with the standard and does not state that the helmet must be certified to the standard or that proof of certification is required and, in fact, Consumer Protection Notice No.9 deletes the requirement for certification marking.

Without the requirement for certification marking the only required labelling referred to in the Standard is an internal one. This label very quickly becomes degraded and illegible with even minimum use of the helmet.

It appears that currently under the Commonwealth law, which is all that manufacturers and suppliers have to comply with, any certification mark is only a commercial advantage for the sale of a helmet and does not form any part of the compliance requirements. This then means that such marks are irrelevant once the sale of a helmet is made. However TMR literature suggests that this is a requirement on a helmet, but does not refer to any internal labelling.

Unfortunately it has come to our attention that law enforcement officers are grossly misusing this law and additionally are issuing infringements which are completely not in the spirit of this law.

We have evidence of officers looking for a certification mark as evidence of approval, which as previously stated, is not even required. Moreover, they then infer that the approval mark is fraudulent, and additionally use the fact that the internal labelling as stated in the Australian Standards has degraded, and is no longer legible, for reason to issue an Infringement Notice. This action can only be classed a complete abuse of the intent of the law and is in no way aimed at ensuring compliance with what the law is intended for - that a rider wear a helmet which meets the Australian Standard.

This situation and the issues raised here need urgent attention because under these conditions it is impossible for law abiding riders to be assured they will not be issued with spurious infringements.

As we do not believe that this is the intention of the rule we urgently request that you investigate and correct the issues raised.

We await your earliest response.

Yours faithfully

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*The Motorcycle Rider's Association of Queensland is the representative body for
Motorcycle & Scooter riders in Queensland*