

## EXPLANATORY STATEMENT

### *Consumer Goods (Miniature Motorbikes) Safety Standard 2019*

#### Overview

The Minister for Housing and Assistant Treasurer (the Minister) has made a new safety standard to provide for the supply of safe miniature motorbikes pursuant to subsections 117(a) and 104 of the Australian Consumer Law, which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth). The new safety standard revokes the Consumer Protection Notice No. 24 of 2011, which banned the supply of miniature motorbikes with unsafe design features. The safety standard, like the ban, permits supply of only miniature motorbikes fitted with specific safety features.

The new safety standard comes into effect on the day after it is registered on the Federal Register of Legislation. The ban is repealed on the day the safety standard comes into effect. A transitional period of 12 months will apply during which suppliers either may supply miniature motorbikes that comply with the new safety standard or would not have been banned under the ban. At the end of the 12-month transitional period suppliers must comply with the new safety standard.

In July 2010 a temporary ban on miniature motorbikes (monkey bikes) with unsafe design features was made under subsection 65C(5) of the Trade Practices Act 1974 (TPA). The temporary ban was made following the harmonisation of State, Territory and Commonwealth product safety bans in preparation for significant changes to consumer law in Australia.

The permanent ban was introduced in 2011 to minimise incidents caused by poorly manufactured miniature motorbikes and those not supplied with basic safety features such as effective brakes, steering, foot pegs and engine cut-out devices. Miniature motorbikes are often copies of road registerable motorbikes such as 'chopper', 'sports' or 'moto GP' bikes.

The Australian Competition and Consumer Commission (ACCC) concluded that the ban was effective in reducing the supply of miniature motorbikes with unsafe design features. Market surveillance indicates that suppliers offer fewer non-compliant products, with the last recall for a miniature motorbike occurring in 2017.

Between 2005 and 2016, fourteen Australians died from incidents involving miniature motorbikes. Eight deaths occurred in the six years before the introduction of the ban with six deaths in the following six years. Data obtained from the Victorian Injury Surveillance Unit (VISU) indicates that there were 418 emergency department presentations in Victoria between 2003 and 2017. Based on this data, the number of Victorian cases per year decreased from an average of 39 prior to Commonwealth regulation to 21 thereafter.

The review identified two remaining categories through analysis of coronial data:

- young riders crashing as a result of speed, inexperience, cognitive development and terrain
- deliberate misuse by teenagers and adults, including on public roads, where alcohol or drugs was a contributing cause.

The ACCC also identified that electrically powered miniature motorbikes are now supplied with the same characteristics (including top speeds) as vehicles powered by an internal combustion engine.

## Repealed permanent ban

The permanent ban on miniature motorbikes (monkey bikes) with unsafe design features was the *Consumer Protection Notice No 24 of 2011* (Federal Register of Legislation No F2011L01702).

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

The repealed ban prohibited the supply of a miniature motorbike unless it met requirements for:

- a self-closing throttle
- effective brakes
- adequate foot pegs
- effective steering
- a supplemental engine stop.

## Requirements of the safety standard

This safety standard applies to miniature motorbikes. The safety standard defines a miniature motorbike as:

**miniature motorbike** (also known as a mini bike or pocket bike) means a vehicle which resembles a motorcycle but scaled down to about half the size, that:

- a) is designed to be used by a single person, and
- b) has a seat height no greater than 600 millimetres, and
- c) has major dimensions which are scaled down in proportion to the seat height.

This definition is consistent with the definition of a miniature motorbike in the *Motor Vehicle Standards Act 1989* (Cth).

**Motorcycle** is defined in the Vehicle Standard (Australian Design Rule - Definitions and Vehicle Categories) 2005 made under the *Motor Vehicle Standards Act 1989* (Cth).

The safety standard maintains those requirements specified in the Consumer Protection Notice No. 24 of 2011 and introduces new requirements including a speed-limiting device, requirements for user instructions and warnings permanently affixed to the product and to the packaging, or in the absence of placement on packaging, via a swing tag attached to the product. The scope of the safety standard applies to any engine type including miniature motorbikes powered by an internal combustion engine and electric power sources such as lithium-ion batteries.

## Exclusions

The safety standard does not apply to toys and miniature motorbikes with a maximum design speed of 30 kilometres per hour or less. For completeness, the safety standard excludes power-assisted pedal cycles, motorised scooters and motorised recreational devices.

The safety standard excludes smaller motorbikes that are registerable for road use. The safety standard also excludes smaller off-road minibikes designed and intended for use by children as a learner or introductory minibike within a product range.

### **Transitional arrangements**

The instrument provides a transitional period of 12 months beginning on the day this instrument commences. During the transitional period, a miniature motorbike complies with the requirements of this safety standard if it:

- a) would not have been banned under the permanent ban, or
- b) complies with the safety standard.

After the transitional period suppliers must meet the requirements of the *Consumer Goods (Miniature Motorbikes) Safety Standard 2019*.

### **Consultation**

The ACCC published a consultation paper for miniature motorbikes and invited stakeholder feedback from 19 November to 14 December 2018. The paper detailed two policy options for dealing with the permanent ban:

- Option 1 - Maintain the permanent ban (status quo)
- Option 2 - Revoke the permanent ban and make a new regulatory instrument.

Twenty-two submissions were received from private individuals, industry representatives, government, suppliers, safety advocates and motorcycle riding associations.

Fifteen stakeholders were in favour of revoking the permanent ban and making a new regulatory instrument (Option 2), while seven preferred the status quo. Nineteen submissions supported the introduction of warnings and instructions. Eighteen submissions supported the introduction of a speed limiting device and seventeen submission supported aligning the definition with the definition in the *Motor Vehicles Standards Act 1989* (Cth).

### **Disallowance**

This legislative instrument is not subject to disallowance due to section 44 of the *Legislation Act 2003* (Cth).

### **Commencement**

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

### **Sunsetting**

This legislative instrument is not subject to sunseting due to section 54 of the *Legislation Act 2003* (Cth).

### **Regulation impact assessment**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required.