

# Queensland Family and Child Commission Submission

**To:** Australian Competition and Consumer Commission (ACCC)      **Date:** 8 May 2018

**Topic:** Quad Bike Safety Consultation – Regulation Impact Statement (RIS)

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## Queensland Family and Child Commission

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The Queensland Family and Child Commission (QFCC) was established on 1 July 2014 with a role to promote the safety, wellbeing and best interests of children and young people. As part of this, the QFCC has a statutory responsibility to maintain Queensland's child death register and report annually on trends and risk factors. The QFCC also has functions to reduce the likelihood of child deaths, including: making recommendations, arising from keeping the register and conducting research, about laws, policies, practices and services; and, allowing genuine researchers to access information in the register to undertake research to help reduce the likelihood of child deaths.

### Submission summary

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the ACCC regarding government intervention to improve quad bike safety.

The QFCC is supportive of Option 5 of the RIS, as the interventions proposed offer the highest level of protections and incorporate a mandatory safety standard in relation to general use quad bikes and side by side vehicles (SSVs). Further, the QFCC supports:

- the requirement for all general use quad bikes to have an Operator Protection Device (OPD), designed to protect the operator in the event of a rollover
- minimum performance requirements for static stability, mechanical suspension and dynamic handling
- the adoption of the labelling requirements within the US Standard
- the introduction of an evidence-based safety star rating system in relation to static stability, dynamic handling and rollover crashworthiness

There is general consensus that children should not ride or be passengers on adult-sized quad bikes, and this is reinforced with product warnings. However it is clear that the warnings are not sufficient to prevent use by children, and the Queensland Child Death Register records eight deaths of under 16 year olds on adult-sized quad bikes in Queensland since 2004. While not within the remit of the ACCC, the QFCC recommends that Australian state and territory governments investigate the feasibility and impact of introducing bans on children under 16 years operating or riding adult-sized quad bikes.

The QFCC is not proposing design solutions for youth-sized quad bikes at this point in time. The QFCC supports, however, national data collection in relation to injuries on youth-sized quad bikes to inform consideration of whether design changes may be needed in the future.

**Question 1**

The ACCC has proposed five options. Which is your preferred option and why do you prefer it to the others?

The QFCC supports child death and injury prevention strategies that provide layers of protection consistent with the Hierarchy of Risk Control Framework.<sup>1</sup> As such, the QFCC is supportive of Option 5, with consideration given to the cost of implementation against the likely reduction of injury and death due to quad bike-related incidents.

Of the options put forward, option 5 offers the highest level of protections and incorporates a mandatory safety standard in relation to quad bikes and side by side vehicles (SSVs) requiring:

- all quad bikes sold in Australia to comply with the US Standard ANSI/SVIA 1–2017
- all quad bikes and SSVs to be tested post-manufacture according to a safety star rating system and display the resulting safety star rating
- all quad bikes to have affixed an additional warning label alerting riders to the risk of rollover, with further information provided in the owner’s manual
- general-use model quad bikes to have Operator Protection Devices (OPDs) fitted
- all wheels of general-use model quad bikes to be able to rotate at different speeds at all times and if it is equipped with a lockable differential, it must be designed to be normally unlocked
- appropriate advice provided to riders in the owner’s manual that the rear differential should be locked before attempting more demanding off-road manoeuvres, and when travelling on loose, low friction or rough surfaces. Additionally quad bikes shall have a notice affixed near the differential lock selection control advising the rider when to lock the differential
- general-use model quad bikes to meet certain minimum performance requirements for static stability, mechanical suspension and dynamic handling.

Without legislative changes prohibiting the use of adult-sized quad bikes by children under 16 years of age, the QFCC does not support option 1 or 2, as neither appear to have any direct impact on reducing the rollover mechanism associated with the majority of deaths of children and young people. Measures aimed at reducing this mechanism of death would be considered a priority focus area for the QFCC.

**Question 2**

If you are a quad bike manufacturer, importer or retailer what impact will these options have on your business? For example, how much will it cost to implement each of the requirements, (design changes and testing), and what is the likely effect on sales and the model range?

Not applicable to the QFCC.

**Question 3**

If you are a quad bike user what would be the impact of the proposed options?

Not applicable to the QFCC.

<sup>1</sup> Safe Work Australia. 2017. “Identify, assess and control hazards” <https://www.safeworkaustralia.gov.au/risk>

**Question 4**

What effect will each of the proposed options have in saving lives and reducing deaths?

The QFCC does not envisage that there will be any reduction in deaths should Options 1 or 2 be implemented.

However, Option 5 aligns with the QFCC's preference for providing layers of protection to prevent child death and injury. The QFCC considers that while options 3 and 4 alone are likely to have some impact on the reduction of the severity and incidence of quad bike-related injury and fatalities, Option 5, in conjunction with possible future changes to legislation and ongoing community education, has the highest likelihood of reducing the incidence of quad bike-related fatalities for children and young people.

**Question 5**

The US Standard requires a number of general warning labels to be affixed to the quad bike. The ACCC is proposing additional labels and information in the owners' manual, alerting the operator to the risk of rollovers and differential selection. Provide comment on these two additional labels (see section 8.6).

The QFCC notes that the US Standard requires a number of general warning labels to be affixed to the quad bike including age use requirements and a warning outlining that passengers should never be carried.

The QFCC supports the adoption of the labelling requirements within the US Standard, in addition to the two suggested labels warning about the risks of rollover and mechanisms to mitigate the risk of rollover (locking of rear differentials when undertaking more demanding off-road manoeuvres).

**Question 6**

Provide comment on the current model of the safety star rating system (see Attachment A).

The QFCC is supportive of the introduction of an evidence-based safety star rating system in relation to static stability, dynamic handling and rollover crashworthiness. However, making comment on the model itself falls outside the scope of the QFCC.

**Question 7**

In Option 3, the ACCC has suggested some safety and operational criteria that an Operator Protection Device (OPD), designed to protect the operator in the event of a rollover, could meet. What are your views on the proposed criterion an OPD may be required to meet? Should additional criteria be imposed?

The QFCC is supportive of the introduction of an Operator Protection Device (OPD). However, making comment on the technical specifications of an OPD falls outside the scope of the QFCC.

**Question 8**

Provide comment on the minimum performance criteria (see Attachment D) and the requirement for general-use model quad bikes to be able to have all wheels of the vehicle be able to rotate at different speeds, referred to in Option 4.

The QFCC is supportive of the introduction of minimum performance criteria in relation to static stability, dynamic handling and rollover crashworthiness. However, making comment on the criteria themselves falls outside the scope of the QFCC.

**Question 9**

Options 3, 4 and 5 do not propose additional design solutions for SSVs and sport and youth quad bikes. If your view is that one or more of these vehicles should be subject to additional design solutions to improve safety, do you have information and data you can provide to the ACCC in support of this view?

Of the 15 quad bike and SSV-related child fatalities in the period 2004 to 2017, two of the deaths involved youth-sized quad bikes. Both were rollover incidents. The Centre for Accident Research & Road Safety Queensland (CARRS-Q) evidence<sup>2</sup> suggests that it is not possible to comment on the incidence of injury related to youth-sized quad bikes as this information is not consistently collected at the time of the incident. Given the small representation of youth quads in fatalities and the lack of injury data, the QFCC is not proposing design solutions for youth-sized quad bikes at this point in time.

The QFCC notes that there is currently no regulation of youth quad bikes in Australia and suppliers can market them to any age group. Additionally, Australian Consumer Law prohibits suppliers from engaging in misleading and deceptive conduct, or that which is liable to mislead consumers, about the characteristics or suitability of goods for their purpose.

Should the US Standard be adopted, the QFCC would support the stipulated speed limitation requirements and the included warning label requirements for recommended age of usage as it would relate to Category Y (youth model) and T (transitional model) quad bikes. Specifically, that manufacturers clearly mark Category Y and T quad bikes with categories for ages 6+, 10+ and 12+ for Y models and 14+ for T models. Additionally, the QFCC would seek that information related to the age recommendations for usage and the need for direct adult supervision be clearly marked on warning labels and on the front of the manufacturer's user manual.

The QFCC notes that purchasers of youth quad bikes may incorrectly assume that design standards and testing requirements that apply to general use quad bikes, should Option 5 be introduced, would also apply to youth bikes. The QFCC suggests that consumer information should clearly indicate the categories of quad bikes which are, and those which are not, subject to safety standards.

The ACCC noted in the Consultation Regulation Impact Statement that it intends to keep a close watch on marketing practices of quad bike suppliers to ensure that they are not engaging in misleading or deceptive conduct, and will continue to monitor the safety hazards posed to children by youth quad bikes.

The QFCC suggests that there is a need for consistent national data collection in relation to injuries sustained while children operate youth-sized quad bikes, and will continue to monitor mortality data to inform whether further design changes may be needed in the future.

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<sup>2</sup> Vallmuur, K., Watson, A., Catchpole, J. (2017). *Quad bike-related injuries in Queensland: Final Report*. Queensland: The Centre for Accident Research & Road Safety – Queensland.

**Question 10**

Provide comment on the transition period for the proposed options (see Section 8.8).

The QFCC supports the concept of a transition period (should a standard be implemented) and the example transition option provided by the Australian Competition and Consumer Commission. A similar staged approach has been implemented successfully in Queensland following changes to pool fencing legislation, with noted reductions in early childhood drownings in residential pools. Where deaths have occurred, there is often non-compliance with the standard.<sup>3</sup>

Where there is a graduated transition period, the QFCC would strongly advocate that a post-implementation evaluation on the effectiveness of the standard should be conducted no later than five years from its introduction. Of particular interest to the QFCC, would be the incidence of injuries and deaths of children and young people while riding youth and transitional model quad bikes to identify if future design changes or greater regulation is needed. This would be largely dependent on the introduction of national injury surveillance that differentiates between injuries and fatalities on youth and transitional model quad bikes compared to general use or adult-sized quad bikes.

**Question 11**

Provide any additional information or data that you think may be useful to informing the ACCC's recommendation to the minister.

The QFCC notes that there is no indication within the ACCC's Regulation Impact Statement of proposed design requirements that restrict the capacity for children to start and/or operate adult-sized quad bikes. The QFCC would seek that further consideration be given to the inclusion of a requirement for child-resistant start mechanisms on adult-sized quad bikes.

There is general consensus that children should not ride or be passengers on adult-sized quad bikes, and this is reinforced with product warnings. However it is clear that the warnings are not sufficient to prevent use by children, and the Queensland Child Death Register records eight deaths of under 16 year olds on adult-sized quad bikes in Queensland since 2004.

In 2015, the Queensland Deputy State Coroner noted in his inquest findings that with the gradual introduction of laws in a number of states in the US to prohibit children from riding adult-sized quad bikes, there had been a statistically significant decrease in the number of quad bike and SSV related deaths for children under the age of 16. It is believed that these laws had been instrumental.<sup>4</sup>

While not within the remit of the ACCC, the QFCC recommends that Australian state and territory governments investigate the feasibility and impact of introducing bans on children under 16 years operating or riding adult-sized quad bikes.

Until such time as legislation is introduced throughout Australia, it is unlikely that there will be any significant cultural change of community perceptions about the ease of accessibility by children to adult-sized quad bikes. The QFCC therefore suggests that child-resistant start mechanisms would mitigate the risk of access to adult-sized quad bikes by children.

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<sup>3</sup> The State of Queensland (Queensland Family and Child Commission) (2017). *Annual Report: Deaths of children and young people, Queensland, 2016–17*

<sup>4</sup> Queensland Courts (2015). Office of the State Coroner Findings of Inquest: *Inquest into nine (9) deaths cause by Quad Bike accidents*.