

6 June 2019

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Via Online Submission:

<https://consultation.accc.gov.au/product-safety/quad-bike-safety-standard-exposure-draft/consultation/intro/>

Dear Sir/Madam,

Thank you for the opportunity to provide a submission in relation to ACCC's recommendation of a mandatory safety standard for quad bikes.

Maurice Blackburn has been a regular contributor to the consultations which led to the ACCC's recommendation.

We note that the consultation seeks input on the following questions:

1. Provide your views on the exposure draft 'Consumer Goods (Quad Bikes) Safety Standard 2019' in your submission below
2. Provide comments on the role State Governments should play, including enforcing the wearing of helmets and safety gear and making it illegal for children to ride adult quad bikes in other than supervised sporting events.

Maurice Blackburn's submissions on these questions appears below.

**1. Provide your views on the exposure draft 'Consumer Goods (Quad Bikes) Safety Standard 2019' in your submission below**

*Safety Rating*

Maurice Blackburn believes that the adoption of minimum labelling and information requirements for quad bikes would ensure consistency across the different iterations of quad

bikes. We are satisfied that better access to warnings and information is likely to contribute to a reduction in deaths and injuries.

On this basis we are pleased that the Exposure Draft mandates the requirement for large, visible safety tags to be on display at point of purchase.<sup>1</sup>

It is also positive that the tag displays the minimum angle the bike tipped at in testing, and the fact that a non-tag safety warning is to be physically stuck to each quad bike is a welcomed requirement.<sup>2</sup>

We believe, however, that it would be more consumer friendly to adopt an ANCAP star style rating, to easily compare quad bikes when it comes time to making a purchase. Further, having this data published online would be helpful to the consumer in making their choice.

A star rating system allows consumers to make an informed decision in relation to the relative safety of a vehicle at the point of purchase, thereby encouraging them to priorities safety over other considerations.

#### *Minimum design standards*

Setting minimum design standards is a positive move forward. However, we note there are inconsistencies with respect to the safety testing and design requirements depending on the classification of bike.<sup>3</sup> Unless there is a sound, scientific reason for this, we would propose a uniformed testing and design process for all quad bikes.

As we have already noted, regardless of what the use of the quad bike is, the dangers remain the same. We therefore think that the standards should be applied equally, regardless of the classification.

Because the dangers remain the same regardless of use, we would have liked to have seen the Exposure Draft apply to all bikes and not provide the second-hand exemption. We are pleased, however, the Standard will apply to bikes which are second-hand at the time of import into Australia.<sup>4</sup>

We are also surprised that bikes for children appear to require less testing (although again, if this is for scientific reasons outside our expertise, then of course we have no objection to same).

Finally, we support the position that General Use model quad bikes should be fitted with an operator protections device (OPD), and that there are minimum performance standards for quad bike mechanical suspension, stability and dynamic handling.<sup>5</sup>

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<sup>1</sup> Consumer Goods (Quad Bikes) Safety Standard 2019 Exposure Draft, s12, sch 1.

<sup>2</sup> Ibid s13

<sup>3</sup> Ibid, sch 1.3, 1.5.

<sup>4</sup> Ibid, s 6.

<sup>5</sup> Ibid s15

### *Harmonisation*

We are disappointed that the Exposure Draft does not attempt to harmonise the State laws. There is no mandate or recommendation to obtain training prior to using a quad bike, nor is there a requirement for registration/insurance.

### *Mandatory helmets*

We are disappointed that the Exposure Draft does not contain a single reference to helmets. The mandating of helmets would clearly increase safety for all uses of quad bikes.

### *Children*

We are also disappointed that there have been no measures to address children operating quad bikes. Per our initial submissions, this would clearly have a positive outcome.<sup>6</sup>

### *International Standards*

The Exposure Draft imports certain sections of the European and US Quad Bike Standards to apply in Australia.<sup>7</sup> These Standards are not available without paying for online access. The Exposure Draft proposes making the standards available for viewing at the ACCC offices, however this is simply unacceptable as a solution in 2019.

This makes interpretation of the Australian Standard difficult for manufactures and businesses. The Australian Standard should be in one document, without the need for cross reference. This assists to resolve any ambiguity that might arise from cross referencing foreign standards.

We cannot urge strongly enough for this idea to be abolished and for the drafters to create one, centralised standard that applies in Australia.

## **2. Provide comments on the role State Governments should play, including enforcing the wearing of helmets and safety gear and making it illegal for children to ride adult quad bikes in other than supervised sporting events.**

Maurice Blackburn believes that enforceable sanctions and a multifaceted approach is the best way to prevent more deaths and injuries to quad bike users.

We understand that the ACCC's task is one part of a wider process of ensuring quad bike safety in Australia. We are therefore advocating for a number of broad, cross-jurisdictional issues, as detailed below.

Given its Commonwealth and State/ Territory government-based membership, we believe that the Quad Bike Inter-Departmental Committee (IDC) is well placed to coordinate a nation-wide conversation on these important issues, which are not covered in the exposure draft.<sup>8</sup>

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<sup>6</sup> *Submission in Response to: The ACCC Quad Bike Safety Issues Paper, Maurice Blackburn Lawyers* (December 2017) p2 , p3, p6

<sup>7</sup> *Consumer Goods (Quad Bikes) Safety Standard 2019 Exposure Draft, s9, s10*

<sup>8</sup> *Submission in Response to ACCC Quad Bike Safety Regulation Impact Statement, Maurice Blackburn Lawyers, (May 2018) p7*

### *Helmets*

We submit that there is an urgent need for a national approach to mandating the use of helmets whenever and wherever a quad bike is used. Helmet use is a critical component in reducing quad bike deaths and injuries.

The wearing of approved helmets should be required not just when on the road, but whenever a quad bike is in use. This should apply to both riders and passengers. Maurice Blackburn also urges the ACCC to advocate strongly that workplace safety rules in all jurisdictions reflect this requirement.<sup>9</sup>

### *Children*

Maurice Blackburn believes that children should be prohibited from riding adult quad bikes and that harmonisation of laws around the capping of quad bike size by age is worth considering. Maurice Blackburn also believes that the use of childproof ignition interlock devices is worthy of consideration.

### *Licensing and Insurance*

Quad bikes that are ridden on public roads should be registered, appropriately insured and their rider should be licenced.<sup>10</sup>

### *Passengers*

In relation to passengers, there is a need for harmonisation of the different jurisdictional rules in relation to the carrying of passengers on quad bikes. This should take into account the purposes for which the particular vehicle was intended and the age of the passengers.

We are pleased to be able to make our expertise in personal injury, workplace safety, road safety and consumer law available to you.

Please do not hesitate to contact me or my colleagues on (07) 5430 8746, or at [AMcKenzie@mauriceblackburn.com.au](mailto:AMcKenzie@mauriceblackburn.com.au) if we can further assist with the ACCC's important work.

Yours faithfully,



Andrew McKenzie  
**Principal Lawyer**  
**Maurice Blackburn**

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<sup>9</sup> *Submission in Response to: The ACCC Quad Bike Safety Issues Paper, Maurice Blackburn Lawyers* (December 2017) p6

<sup>10</sup> *Ibid* p7