



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Review of the permanent ban on miniature motorbikes (monkey bikes) with unsafe design features

Consultation paper

November 2018



Disclaimer

The Australian Competition & Consumer Commission (ACCC) has developed this consultation paper to seek the views of stakeholders about the permanent ban of miniature motorbikes (monkey bikes) with unsafe design features.

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1. Introduction

The Australian Competition and Consumer Commission (**ACCC**) is reviewing the [Permanent ban on miniature motorbikes \(monkey bikes\) with unsafe design features](#) (the **ban**) to assess its ongoing efficacy following analysis of death and injury statistics and market developments, including the supply of increasingly powerful electrically powered vehicles.

Two policy options are outlined in this paper and we invite feedback from business, consumers, clubs and associations, safety experts, government and interested members of the public. We encourage you to consider the questions at Section 9 when making a submission. You do not need to answer all or any of the specific questions to make a valid submission.

This consultation may be the only opportunity for you to provide input into this review. We encourage you to make a submission.

2. Policy options

This consultation paper discusses two policy options:

Option 1 Maintain the permanent ban (status quo)

Option 2 Revoke the permanent ban and make a new regulatory instrument

3. Background

Miniature motorbikes are small motorcycles scaled down to about half the size of a full size motorcycle which are intended, designed and supplied for use other than on a declared road. Miniature motorbikes are not permitted to be registered for use on declared roads as they do not meet the requirements of the Australian Design Rules (**ADRs**) administered under the *Motor Vehicle Standards Act 1989*.

The ban does not apply to motorcycles that are designed and manufactured according to the ADRs and intended to be registered for use on public roads. Other categories of motorcycles that are manufactured for agricultural or off road use including dirt, motocross, trail and endurance motorcycles that are not scaled down versions of a full size motorcycle are also not intended to be captured by the ban.

The temporary national ban introduced in 2010 was made permanent in 2011 under the Australian Consumer Law (ACL) as part of the harmonisation of state and territory regulations which had been in place from at least late 2005. The temporary ban and some state and territory regulations included electric powered vehicles. These were excluded in the permanent ban as they did not pose a safety hazard due to their low speeds. The ban is intended to minimise incidents caused by poorly manufactured vehicles and those not supplied with basic safety features such as effective brakes, steering, foot pegs and engine cut out devices. The ban does not extend to improper use or misuse of miniature motorbikes.

The ban prohibits the supply of miniature motorbikes powered by an internal combustion engine (ICE) unless they comply with the requirements for each of the:

- throttle
- braking system
- foot pegs
- steering, and
- supplemental engine stop.

4. Compliance

The Ban has been effective in prohibiting the supply of products with unsafe design features. The ACCC and state and territory ACL co-regulators periodically survey the market for non-compliant products.

Since the ban commenced there have been 12 recalls of miniature motorbikes that did not comply with the ban due to a range of issues including faulty braking systems, not having the supplementary engine stop, inadequate foot pegs and inadequate or defective steering.

In 2017 ACCC surveillance identified seven miniature motorbikes available from online suppliers that did not comply with the ban. These miniature motorbikes were subsequently recalled or removed from sale.

When surveying bricks and mortar stores ACL regulators found high levels of compliance with the ban.

5. Deaths and injuries

The Ban has been effective in minimising deaths and injuries caused by the supply of products with unsafe design features with no deaths resulting from product failure. It has been less effective in minimising death from product use or misuse. A review of Coroners' findings indicates there were 14 deaths between 2005 and 2016 involving miniature motorbikes. Eight deaths occurred in the six years prior to the introduction of the temporary ban in 2010 and six deaths occurred in the six years after it was introduced.

In eight of the 14 deaths the Coroner assessed the motorbike for mechanical defects, with no deaths being attributed to poor design or manufacture. The Coroner did not report on whether there were mechanical failings in the other six cases, possibly as a mechanical defect was not a contributing factor in the death. The cause of death in all cases was product use or misuse. Of the 14 deaths, seven riders were aged 16 years and older and seven were aged 15 years and under.

Of the riders aged 16 years and older, illicit drugs and/or alcohol was a contributing factor in five of the seven deaths. In five cases the rider had ridden the bike on a declared road in contravention of the relevant road traffic laws. In three cases the rider struck another vehicle with the remaining riders losing control and either falling or hitting a stationary object. None of these riders were wearing helmets.

Of the seven riders aged 15 years and under, four riders were riding off-road and three were riding illegally on a declared road. The three off-road deaths occurred where the rider lost control and hit the ground or a stationary object, with the remaining death attributable to the rider hitting another motorbike. All on-road deaths involved impact with another vehicle, with

the ability of the rider to control the vehicle at speed and to assess their environment found to be contributing factors.

Only four riders in this age group were wearing helmets and two were wearing protective gear in addition to a helmet. No riders in this age group were intoxicated.

The ACCC is also aware of a 2015 death of a pedestrian struck by a rider in a shopping centre in Victoria. The rider, who had constructed the motorcycle from spare parts, was charged and sentenced to one count of culpable driving.

Consolidated injury data on miniature motorbike injuries is not collected nationally. However, data obtained from the Victorian Injury Surveillance Unit (VISU) indicates there were 418 emergency department presentations in Victoria attributed to miniature motorbikes between 2003 and 2017. Based on this data, the number of cases per year decreased from an average of 39 per year prior to Commonwealth regulation to 21 per year thereafter.

The most common injuries were classified as fractures, dislocation, sprain and strains, and superficial injuries. Serious injuries, such as intracranial injuries, were identified in the data but were uncommon. No incidents were attributed to product failure.

Additional requirements including warnings and instructions and speed limiting devices when a miniature motorcycle is ridden by children is likely to have a positive benefit in further reducing incidents.

6. Issues & proposed solutions

Age appropriateness

Four children under 12 years of age have died while riding miniature motorbikes in Australia, the majority while under adult supervision. Following the death of one young child the Coroner recommended that children under a certain age, without specifying an age, should not ride a miniature motorbike until an appropriate level of cognitive development and/or proficiency in the use of a miniature motorbike is achieved. The findings noted that the child had not reached a level of cognitive development which would have enabled the rider to assess and therefore avoid the hazard.

Although it is not possible to know the mindset of a parent or carer at the time of a product purchase, it may be that they were not aware of the hazard of this product at the time of purchase to a child who had not reached a suitable level of cognitive development. Despite appearances, miniature motorbikes are not toys. Their marketing as 'fun for kids' and their small size may give parents the false impression they do not pose a hazard. When considering purchasing these products, parents and carers may not be aware they are capable of speeds of 50 km/h or more.

Expert opinions note that children less than six, eight or even ten years of age should not ride these products. The need for a minimum age is recognised by standards making bodies in their standards for these and similar products. The US voluntary standard ASTM F264 -08 sets a minimum age at eight years and limits the top speed of products intended for children aged eight to 12 years at 16 km/h, well below those of many miniature motorbikes on the market.

We consider warning information on age appropriateness would assist parents and carers to make informed decisions about purchasing a miniature motorbike for a child. Information could also be provided to inform parents / carers to ensure these products are used only

under constant adult supervision. This could be achieved through including a requirement in a new regulatory instrument.

Speed limiting device

The inability of a young rider to control a motorbike at a particular speed was a contributing factor in the seven deaths of children aged under 16 years of age and a contributing factor in a number of injuries. Some motorbikes have a function to address this hazard in the form of a speed limiting device.

Given the correlation between speed and rider inexperience as a cause of death and serious injury, we are assessing whether a new regulatory instrument should include a requirement for a speed limiting device. This could either be required on all miniature motorbikes or restricted to those products that are marketed to children less than a specified age, for example a new instrument could adopt the age grading in a voluntary standard, such as the ASTM standard referenced above.

Speed limiting devices usually limit the range of a bike's throttle, thereby limiting its maximum speed. This would allow parents and users to manually control the maximum speed of a miniature motorbike, e.g. while a novice or young rider gains experience and confidence and develops the skills to handle a miniature motorbike at speed.

Warning labels and instructions

Warning labels and instructions are effective when hazards cannot be designed out of a product or physically guarded against. In these circumstances it is important to warn consumers about preventable use and misuse of products that could lead to death or serious injury.

The ban does not include requirements for warning labels or instructions. Based on analysis of the causes of death and injury the inclusion of a requirement for warnings and instructions may play a positive role in reducing future incidents, especially for deaths to children where they had not reached a suitable level of cognitive development and/or did not have the ability to control the vehicle. This requirement would address the current market failure where not all manufacturers provide warnings and instructions. It would also ensure that warnings and instructions are consistent across manufacturers, that they identify hazards and convey information in a simple, clear and readily understood manner.

Based on our analysis of deaths and injury, warnings and instructions could address the following hazards:

- Not riding on public roads
- Using protective clothing
- Not riding while impaired (injury, tired, drugs and alcohol)
- Age appropriateness
- Parental / carer supervision
- That these products are capable of high speeds
- Appropriate skills / experience / training
- Rider weight and passengers
- Not to be ridden in low visibility conditions.

Electric powered miniature motorbikes

The current ban provides a definition of a miniature motorbike as a product that is powered by an internal combustion engine (ICE) that is not certified under the 'Road Vehicle Certification System' operated by the Australian Government Department or agency having responsibility for the certification of road vehicles. Since the ban was introduced, we have identified that a market has developed for the supply of electrically powered miniature motorbikes that have the same characteristics as ICE powered vehicles, including top speeds due to advances in battery technology.

As electric powered miniature motorbikes with unsafe design features pose the same risk to riders as ICE powered miniature motorbikes, they should to be treated on an equivalent regulatory basis which would continue to maintain the regulatory intent of the Ban.

Since the ban was introduced, the [Motor Vehicle Standards \(Road Vehicles\) Determination 2017](#) (the **Determination**) made under the *Motor Vehicles Standards Act 1989* has introduced a definition of a miniature motorbike that is agnostic as to the power source of the vehicle. The Determination 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
- (b) has a seat height no greater than 600 mm, and
- (c) has major dimensions which are scaled down in proportion to the seat height.

The definition sets the seat height at 600 mm as the minimum seat height for an adult sized bike was found to be 600 mm following a survey of the market. The addition of scaling of the major dimensions (wheelbase, wheel size, handlebar height etcetera) has been included to further clarify the definition. By not specifying engine type the definition captures electrically powered miniature motorbikes.

7. International standards

When making recommendations for new and amended regulations *The Australian Government Guide to Regulation 2014* requires policy makers to consider international standards as an option for regulation.

The ACCC has assessed the following United States (US) (voluntary) and European (mandatory) standards against the criteria for using international standards in consumer product safety standards and bans:¹

- US F2641 - 08(2015) *Standard Consumer Safety Specification for Recreational Powered Scooters and Pocket Bikes* (F2641)
- EN 16029:2012 *Ride-on, motorized vehicles intended for the transportation of persons and not intended for use on public roads - Single-track two-wheel motor vehicles - Safety requirements and test methods.*

We have assessed that the US standard is not suitable for use in Australia as its scope is limited to electric pocket bikes and does not encompass vehicles powered by an ICE. The standard outlines requirements for products designed for use by children aged between eight and twelve years and for children aged over 13 years of age.

¹ ACCC, International standards for the safety of consumer products - criteria for acceptance, ACCC policy principles, 22 July 2015, www.productsafety.gov.au/content/index.phtml/itemId/1014180

We have also assessed that the European standard is not suitable as it is restricted to ICE powered vehicles. The requirements of the European standard also differ from the requirements of the Ban, for example, requirements for throttle and braking systems.

8. Detailed policy options

Option 1 – Maintain the permanent ban (status quo)

Description

The permanent ban would continue in its current form. Miniature motorbikes supplied to the Australian market would continue to comply with the current requirements.

Benefits

Suppliers are familiar with current regulatory arrangements and retaining the current ban would maintain the status quo with no additional costs being imposed on suppliers.

Limitations

Maintaining the status quo may lead to deaths and injuries that would otherwise be prevented from the introduction of a new regulation, for example electric powered miniature motorbikes would remain outside the scope of the ban. Although difficult to calculate at least some deaths, particularly those of children, may be prevented where parents and carers take into account warnings and instructions about the suitability of this product for young children and, where a child rides a miniature motor bike they have suitable awareness and training and a speed limiting device is installed and used. Each death that is not prevented under a status quo scenario is estimated to cost around \$5 500 000².

Option 2 – Revoke the permanent ban and make a new regulatory instrument

Description

This option would maintain the existing requirements and introduce new requirements to:

- adopt the definition in the Motor Vehicles Standards Act
- include a requirement for a speed limiting device
- include requirements for warnings and instructions.

Benefits

This option would likely reduce the risk of death and serious injury caused from the foreseeable use and misuse of miniature motorbikes through the inclusion of the above listed requirements in a new instrument.

It is not possible to predict accurately the correlation between the proposed requirements and the reduction in future deaths although each death prevented is calculated at approximately \$5 500 000 in 2018 dollars. These benefits mirror the limitations in option one.

² Office of Best Practice Regulation; 'Best Practice Guidance Note Value of statistical life'. 2014 figures updated using a 7% rate.

Limitations

This option would require suppliers to familiarise themselves with the new requirements and may impose some additional requirements for warning labels and instructions. Our initial assessment is that these costs are likely to be low. There may be additional costs where installation of a throttle control device is required, although a number of products are supplied with these devices as standard. We welcome additional information on the possible costs of implementing a new regulatory instrument.

9. Key questions

Please consider the following questions in your submission. Submissions do not need to answer all or any of these questions and may include any information that might be relevant for this review.

1. What is your preferred option and why?
2. Do you agree a speed limiting device is an appropriate measure to reduce the risk of death and injury for young children?
3. Do you agree a new regulation should align with the definition for miniature motorbikes that is in the Motor Vehicle Standards (Road Vehicles) Determination?
4. Do you agree a new regulation should include requirements for warnings and instructions? What issues should warnings and instructions address?
5. If you are a supplier can you please advise if there would be any costs associated with adopting option two?
6. Are there any other options the ACCC should consider?
7. Do you have any other comments or suggestions?

10. Have your say

The ACCC invites you to comment on this review. The consultation is open from 19 November to 14 December 2018.

The ACCC prefers that you submit your answers and other feedback online on our consultation hub at consultation.accc.gov.au.

Submissions can also be posted to:

Director
Standards and Policy
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Australian Competition and Consumer Commission
GPO Box 3131
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