
Around the Nation: Tasmania

Editor: Justice Stephen Estcourt AM

REGULATION OF ALL-TERRAIN VEHICLES

On 30 December 2011, Holly Raper, a 24-year-old British backpacker, was employed working on a dairy farm on King Island. At around 10.00 am on that day Ms Raper was found on the ground in a relatively flat paddock on the farm, immediately adjacent to an all-terrain vehicle known as a quad bike which she had been riding, and in close proximity to a shallow spoon drain traversing the paddock.

Ms Raper suffered serious head and facial injuries as a result of her obvious fall from the quad bike and she was flown to the Royal Hobart Hospital. She was later flown to the Royal Preston Hospital in Lancashire, England, where she remained until she was discharged to her home in nearby Chorley on 4 April 2013.

Since her accident Ms Raper has been in either a vegetative state or a minimally conscious state. She can move her head but she does not have functional movement in any of her limbs. She is confined to her bed or a wheelchair. She requires 24 hours a day attendant care. She is unable to communicate except, perhaps, with her eyes.

Ms Raper, by her mother as her deputy, sued her former employers for damages. Despite the fact that she had not been properly trained to ride the quad bike she was riding, as opposed to being shown how it worked, and despite the fact that she was permitted to ride it without wearing a safety helmet, the defendants' position at trial was that they were not liable for damages for negligence or for breach of statutory duty.

The defendants contended that it could not be known how Ms Raper came to be separated from the bike, and that if she could not prove how the accident happened, then it followed that she was not able to prove that a lack of training, or any other alleged breach of duty was causally related to it.

It was suggested that Ms Raper might have been driving too fast, or that she may have been kicked by a cow, or that she fainted while riding, or that she was injured elsewhere in unknown circumstances and rode to where she was found and then fell off the bike.

The point about this is that at the heart of the defendants' position was an apparent complete disbelief that riding a quad bike could be so inherently dangerous as to permit a rollover during its ordinary operation in a farm paddock, and one capable of causing such devastating head injuries.

However in 2018 the University of New South Wales Transport and Road Safety unit warned that a 10cm bump is all that is needed to roll a quad bike doing just 20km/h on a 12.5-degree slope.

On 22 May 2016 a friend and colleague, Melbourne barrister, Ross Ray QC, former Victorian Bar President and President of the Law Council of Australia, was tragically killed in a quad bike rollover accident at his hobby farm near Mansfield in Victoria.

Almost two years after that tragic death the Australian Competition and Consumer Commission (ACCC) announced on 22 March 2018 that it proposes major changes to improve the safety of quad bikes, including the introduction of a safety rating system, crush protection devices and mandatory minimum performance standards.

The ACCC states that there are approximately 190,000 quad bikes in operation in Australia used in workplaces, recreation, adventure tours and competitive racing. Currently about 16,000 quad bikes are sold each year in Australia.

These all-terrain vehicles are one of the leading causes of death and injury on Australian farms. Since 1 January 2011, 114 people have died in quad bike-related incidents. Since 2001, there have been more than 200 quad bike-related deaths in Australia. About 8,000 people have been hospitalised with serious injuries caused by quads.

It is surprising therefore that in 2016 there was such disbelief on the part of the defendants at the trial of Ms Raper's damages action in the Supreme Court of Tasmania, which sat in Manchester and in Hobart to hear the evidence.

It may be that despite numerous coronial findings the users of these vehicles had refused or been very slow to accept the extent of the machines' inherent instability because quad bikes are so useful.

It took several years for Victorian coroner John Olle to complete the inquest into the eight deaths, which took place in Victoria and Tasmania in 2002.

Perhaps, ironically, in 2005, Ross Ray appeared in the Victorian Supreme Court on behalf of quad bike maker Honda on an application to disqualify Victorian coroner Graeme Johnstone from an inquest into a number of deaths in Victoria and Tasmania, after it had been revealed that the coroner had made contact with a witness who expressed a view that an absence of rollover bars on quad bikes had led to the deaths of two people.

While noting that the main dispute at the inquest relevant to Honda concerned the introduction of rollover bars on all quad bikes, Tim Smith J dismissed the application, finding that the coroner had maintained an "impartial and unprejudiced mind" throughout the inquest.

In calling for submissions on its recent proposal, ACCC Commissioner Mick Keogh noted that quad bike accidents result in an average of 16 deaths in Australia each year. They also result in approximately six people per day attending a hospital emergency department, with one-third of those requiring hospitalisation for serious injuries.

To help reduce these deaths and injuries the ACCC is proposing a mandatory safety standard that:

- adopts the US Standard and requires an additional rollover warning label;
- introduces a safety star rating system so safer vehicles get a higher rating;
- requires manufacturers to integrate an operator protection device, such as a crush protection device or rollover protection device, in the design of new quad bikes; and
- imposes minimum performance tests for dynamic handling, stability and mechanical suspension, and requires that all wheels be able to rotate at different speeds.

It is also to be noted, I would contend, that the designation of "all-terrain vehicle" suggests that quad bikes do not pose a danger on uneven terrain. That is clearly not the case. Indeed, it is clear from the decision in *Ms Raper's case*,¹ that an all-terrain vehicle can rollover on relatively flat terrain, as now confirmed by the University of New South Wales Transport and Road Safety unit statement referred to above.

To the ACCC's proposals one might add that compulsory wearing of safety helmets should be considered in any framing of legislation to regulate quad bikes and their use.

In *Raper v Bowden*, the evidence was that safety helmets were available for use by employees of the defendants when riding quad bikes, but that the wearing of helmets was not required of them, much less enforced. Indeed the failure of employees to wear safety helmets was ignored by the defendants. The first named defendant pleaded guilty to a charge of failing to ensure Ms Raper wore a helmet when riding the quad bike contrary to s 9(1) of the *Workplace Health and Safety Act 1995* (Tas).

The case for regulation by mandatory standards legislation seems clear. It has been perhaps too long in coming under consideration. It is regrettably too late for so many people who have been killed and injured, including Ross Ray QC and Holly Raper.

Ms Raper succeeded in her action against her employers and her damages were assessed in pounds sterling totalling £6,970,426, making it the largest award of damages for personal injuries in Tasmania.

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¹ *Raper v Bowden* (2016) 76 MVR 369.