



The law and quad bikes

Disclaimer:

Consider driving a car down a “100kph” road, a sharp bend in the road or in heavy rain, a ‘safe driving speed’ may be much less than 100kph. Good workplace managers ensure staff safety (*a safe driving speed*) but this overview is about the “100kph sign” or the ‘law’, which may or may not be a ‘safe driving speed’. The speed limit is one of many rules, as is workplace safety. This overview doesn’t cover everything in the law, and is not intended as legal advice. You must obtain your own independent legal advice.

A common misconception is that Workplace Health and Safety law (WHS) is very detailed. That is, the law says “thou shall do A,B,C and D”, but this is not the case. The law applies to all workplaces, and is very broad. Australia’s new ‘WHS Act’ about ‘Plant’ (machinery) reads

WHS Act 2011

Division 2. 19 (2) Primary duty of care

A person conducting a business or undertaking has the primary duty under the Act to ensure, as far as reasonably practicable, that workers and other persons are not exposed to health and safety risks arising from the business or undertaking.

(3) ...ensure, so far as is reasonably practicable:

(b) the provision and maintenance of safe plant

The act is non-specific about individual types of ‘plant’, and doesn’t mention the words ‘quad bike’, ‘ATV’, or ‘tractor’. The ‘WHS Regulations’ of the ‘Act’ are more specific;

214 Powered mobile plant—general control of risk

The person with management or control of powered mobile plant at a workplace must in accordance with Part 3.1, manage risks to health and safety associated with the following:

(a) the plant overturning;

(b) things falling on the operator of the plant;

(c) the operator being ejected from the plant;

(d) the plant colliding with any person or thing;

(e) mechanical failure of pressurised elements of plant that may release fluids that pose a risk to health and safety.

Again the word ‘plant’ is used. That is because the WHS Regulations apply to all workplaces and all plant, from forklifts to dozers; and quad bikes are considered plant. (Note; this list of risks does not include all possible or known risks, **all** of which must be managed to comply with the Act.) As stated, each risk **must** be managed in accordance with Part 3.1 of the Regulation. (Part 3.1 is at the bottom of this overview)

Here is a couple of *abbreviated* examples of how one might manage the risks (listed above), in relation to quadbikes (in accordance with Part 3.1.)

Example **A** (214c) the operator being ejected from the plant (quadbike)

Example **B** (214a) the plant (quadbike) overturning

Assume that, for both examples, the ‘risk’ can’t be ‘eliminated’, and the ‘substitution’ of a safer vehicle is not practical. Also for both examples, the ‘risks’ are obviously unable to be ‘isolated’.

Example **A** the operator being ejected from the quadbike

- First you **must** “implement engineering controls”-- No engineering (seatbelt) control available.
- Implementing administrative controls--1. Set property speed limits for quadbikes (say 30kph). 2. Provide operator training 3. Restrict quadbike use to persons 16year+
- Provision and use of suitable personal protective equipment-- Supply and enforce the use of a suitable helmet.

Example **B** the quadbike overturning

- First you **must** “implement engineering controls”-- Fit a Crush Protection Device (CPD)
- Implementing administrative controls--1. Provide operator training 2. Restrict quadbike use to persons 16year+



- Provision and use of suitable personal protective equipment – Supply and enforce the use of a suitable helmet

Note: The examples are simplified, and you must do a more detailed risk and control assessment. WHS professionals, farming organisations and farm safety groups may be able to assist you.

To help with identifying risks and control measures, for some industries a Code of Practice (COP) is produced. Below is what Safe Work Australia says about a COP

Code of Practice

- *The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.*
- *In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act,*
- *Codes of practice are admissible in court proceedings under the WHS Act and Regulations. Courts may regard a code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates*

A few point about a code of practice (also known as Rural Plant Code).

- Codes of practice help define what is reasonably practicable; i.e. if there is a known acceptable/ agreed solution to a hazard/ risk then it becomes described in a code of practice as an agreed method/solution to manage a known hazard
- You must consider all risks. A poorly produced COP may not include all known risks which may leave you open to prosecution even if you followed the COP
- If you disagree with part of a COP, you don't have to comply, **But** you must do your own risk and control assessment, with detailed reasoning backed up with **documented evidence** (not—"I don't like helmets because they are hot and I may suffer from heat stroke, and John, from down the road told me, so it must be true")

A COP is **not** the 'law', but in practice is the 'law'. Current rural media in Australia is talking about "the wearing of helmets on quadbikes becoming law". This is technically incorrect. The wearing of helmets will be included in the COP (not the Act). In some states, helmets have been in their COP's for years, so this is actually nothing new! Failure to comply with the COP may lead to prosecution under the Act

Part 3.1 Managing risks to health and safety

32 Application of Part 3.1

This Part applies to a person conducting a business or undertaking who has a duty under these Regulations to manage risks to health and safety.

33 Specific requirements must be complied with

Any specific requirements under these Regulations for the management of risk must be complied with when implementing the requirements of this Part.

Examples

A requirement not to exceed an exposure standard.

A duty to implement a specific control measure.

A duty to assess risk.

34 Duty to identify hazards

A duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety.

35 Managing risks to health and safety

A duty holder, in managing risks to health and safety, must:

- (a) *eliminate risks to health and safety so far as is reasonably practicable; and*
- (b) *if it is not reasonably practicable to eliminate risks to health and safety—minimise those risks so far as is reasonably practicable.*

36 Hierarchy of control measures

- (1) *This regulation applies if it is not reasonably practicable for a duty holder to eliminate risks to health and safety.*
- (2) *A duty holder, in minimising risks to health and safety must implement risk control measures in accordance with this regulation.*
- (3) *The duty holder must minimise risks, so far as is reasonably practicable, by doing 1 or more of the following:*
 - (a) *substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk;*
 - (b) *isolating the hazard from any person exposed to it;*
 - (c) *implementing engineering controls.*

Note

A combination of the controls set out in this subregulation may be used to minimise risks, so far as is reasonably practicable, if a single control is not sufficient for the purpose.

(4) *If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls.*

(5) *If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by ensuring the provision and use of suitable personal protective equipment*