



## CORONERS COURT OF NEW SOUTH WALES

<b>Inquest:</b>	Inquest into the death of Myley Maxwell
<b>Hearing dates:</b>	5 – 7 March 2019
<b>Date of findings:</b>	30 May 2019
<b>Place of findings:</b>	NSW Coroners Court - Lidcombe
<b>Findings of:</b>	Magistrate Elizabeth Ryan, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – death of a child – adult sized quadbike operated by children – use of quadbikes without helmets – whether further regulation required – previous coronial recommendations - recommendations.
<b>File number:</b>	2017/69995
<b>Representation:</b>	Counsel Assisting the inquest: P Dwyer of Counsel i/b Crown Solicitors Office. The Maxwell family: B Hughes of Senior Counsel i/b Gorman Jones Lawyers. The MW family: D Dinnen of Counsel i/b Younes and Espinor Lawyers. The NSW Commissioner of Police: M Seymour of Counsel i/b Hicksons Lawyers.

<b>Findings:</b>	<p><b>Identity</b> The person who died is Myley Maxwell born 14 May 2010.</p> <p><b>Date of death:</b> Myley Maxwell died on 5 March 2017.</p> <p><b>Place of death:</b> Myley Maxwell died at Gwabegar, NSW 2356.</p> <p><b>Cause of death:</b> Myley Maxwell died of blunt force head trauma.</p> <p><b>Manner of death:</b> Myley Maxwell died when the adult size quadbike on which she was a passenger collided with a tree, causing her to receive fatal head injuries.</p>
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<p><b>Recommendation pursuant to s82:</b></p>	<p>To the NSW Attorney General's Department:</p> <p><u>Recommendation 1</u> That consideration be given by the NSW Attorney General to the introduction of legislation creating a criminal offence for adults who allow children under the age of 16 to ride adult-sized quadbikes.</p> <p><u>Recommendation 2</u> That consideration be given by the NSW Attorney General to the introduction of legislation creating a criminal offence for adults who allow children under the age of 16 to ride any quadbike without a helmet.</p> <p><u>Recommendation 3</u> That consideration be given by the NSW Attorney General to making the necessary amendments to legislation to allow police to enter private property to investigate the above offences, where there is a reasonable suspicion that an offence has been committed.</p> <p><u>Recommendation 4</u> That consideration be given by the NSW Attorney General to the introduction of legislation requiring mandatory licensing of all persons using adult sized quadbikes (ie all persons over the age of 16).</p> <p><u>Recommendation 5</u> That a working group comprised of appropriate representatives from NSW Government, SafeWork NSW, NSW Police and non-government industry groups be formed to consider:</p> <ul style="list-style-type: none"> <li>a) how any new requirements regarding the use of adult sized quadbikes should be implemented</li> <li>b) how any new requirements relating to the use of adult sized quadbikes should be enforced</li> <li>c) what education campaign is likely to be effective in changing attitudes and behaviour relating to the use of children by quadbikes in a manner that poses an unacceptable risk to their safety.</li> </ul>
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## Non Publication orders

At the request of Myley Maxwell's parents, her name has not been anonymised.

Pursuant to section 74(1) of the *Coroners Act 2009*, there shall be no publication of the following evidence given in the proceedings:

- evidence tending to identify the members of the MW family, and the children who accompanied Myley Maxwell on the quadbike ride on 5 March 2017.
- sound recordings of '000' calls made on 5 March 2017 in relation to the incident.
- videos recorded on 5 March 2017 on the mobile phone of V, together with still images and sound recordings derived from those videos.

Section 81(1) of the *Coroners Act 2009 (NSW)* [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to the date and place of a person's death, and the cause and manner of death.

In addition the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question.

These are the findings of an inquest into the death of Myley Maxwell.

## **Introduction**

1. Myley Maxwell was only six years old when she died on 5 March 2017. She was a passenger on an adult sized quadbike which was being ridden on a rural property in north western NSW. The thirteen year old child who was operating the quadbike was unable to steer it around a bend and it collided into a tree. Myley received fatal injuries to her head, and she died soon afterwards.
2. Tragically Myley is not the first child to have died in this way. Like most children who have lost their lives in quadbike accidents, she and her friends had been permitted by adults to use quadbikes in ways that were far outside their intended usage, and in complete disregard for warnings prominently displayed on the quadbikes.
3. The safety of children when using quadbikes has been the subject of coronial interest for some years. Coroners' courts have accepted the unequivocal evidence of safety experts and industry groups that it is not safe for children to ride adult sized quadbikes. Nor is it safe for children to ride quadbikes without helmets.
4. Despite this, adults continue to put children at risk. The way in which Myley and her friends were permitted to use quadbikes that day was wholly inappropriate and unsafe. It seems that many years of public awareness campaigns and manufacturer warnings have not brought the behavioural change that is needed. Recommendations repeatedly made by coroners in these profoundly sad inquests remain unacted upon.
5. Myley's death raises the question of how cultural resistance to important safety changes can be overcome. In this inquest I have determined to repeat previously made recommendations that seem to me to be critical when it comes to preventing deaths like that of this little six year old. They are that adults be prohibited from allowing children to use adult sized quadbikes; and that helmets be mandatory for children using quadbikes. I have also recommended that there be a licensing system for adult sized quadbike use.
6. Myley's death was a tragedy that was entirely preventable. Her family is heartbroken by her death, and the four young girls who were with her are still struggling with their feelings of shock and sadness. Like Myley's family, I

hope that her death will prompt positive changes that will reduce the risk of other families being devastated in this way.

### **The inquest**

7. The inquest was attended by Myley's parents and grandparents, and many members of her extended family. JMW and RMW also attended, supported by a close family friend. They are the owners of the property on which this tragic accident took place.
8. Myley's parents Sheree and Joshua are heartbroken at the loss of their vivacious, affectionate little daughter. At the close of the evidence they asked their Counsel Mr Hughes SC to read to the court their expressions of grief and love for Myley. They are struggling with their crushing sense of loss while they continue to parent their two younger children.
9. Myley's grandparents, aunts and uncles, little cousins and school friends also wrote letters expressing how deeply they miss this lively little girl who, as one put it, had '*a big life ahead of her*'. Myley was deeply loved and her death has had a devastating impact on her family and friends.
10. Myley's death has also profoundly affected others, including the four girls who were with her that day, and the police officers who investigated her death. The MW family too are struggling to find a way to come to terms with what happened that day.
11. Despite their distress Myley's parents and extended family attended each day of the inquest. It was very important for them to understand how this tragedy happened, and to identify how similar deaths might be prevented in the future.
12. At the inquest the following issues were examined:
  - The events leading up to the crash
  - What caused the quadbike to crash
  - Whether there should be further regulations governing quadbike use.

### **Background**

13. Myley was born on 14 May 2010. She lived with her parents and her two younger siblings on a rural property 'Oerrel' near Wee Waa NSW. Wee Waa is a town located in the north western region of New England.
14. To the south of 'Oerrel' is the property owned by the MW family. R and J live there with their daughter J then aged 13, and their older son. The Maxwell and MW families knew each other well. The court heard that Myley was good friends with J despite their age difference, and loved to spend time with her at the MW property.
15. On the weekend of 3-5 March 2017 J had invited three school friends V, BG and BH to stay the weekend for her birthday. All the girls were aged thirteen years. On the night of Saturday 4 March the MW family took the girls out to

dinner in Wee Waa. With them came Myley. Myley's mother Sheree Maxwell had agreed for Myley to stay that night with the MWs.

16. On Sunday morning the five girls went out riding on two quadbikes owned by the MW family. It was on one of these quadbikes that Myley lost her life.

### **The two quadbikes and their warning labels**

17. The two quadbikes were both adult sized vehicles. They were single seat Honda TRX 4 wheel drive quadbikes, each with a 420cc capacity.
18. A quadbike is a four wheel motorised vehicle which rides on low-pressure tyres and has handlebars for steering control. Quadbikes are also known as 'quads' and 'ATVs' (All Terrain Vehicles]. In the farm environment they are useful machines and are also used for recreational purposes.
19. As noted, the two quadbikes used on 5 March 2017 were adult sized. Quadbikes designed for use by children are available on the market. There is a clear distinction between these models and those intended for use by adults. In addition to being of smaller size and lighter weight, child size quadbikes are designed not to be able to exceed certain speeds unless they are mechanically altered.
20. The two quadbikes used by the children displayed safety warning labels which were of importance to this inquest.
21. On the body of each quadbike, below the left handle bar was a sign carrying the warning:  
*'Improper ATV use can result in SEVERE INJURY or DEATH'*.
22. Below this were instructions in capital letters to:
  - always use an approved helmet and protective gear
  - never carry passengers
  - never use on public roads
  - never use with drugs and alcohol.
23. The same label warned against, among other things:
  - operating the vehicle without training and instruction
  - at speeds too fast for the rider's skills or the conditions
  - operating the quad bike with a passenger, explaining that *'passengers can affect balance and steering and increase the risk of losing control'*
24. There was a second warning label below the right handlebar of each quad bike. It consisted of a red circle with a line drawn diagonally through it from left down to right. It contained the words: *'Under 16'*. Beneath the circle appear the following words:  
*'Operating this ATV if you are under the age of 16 increases your chance of severe injury or death. NEVER operate this ATV if you are under age 16'*.

25. At the rear of each quad bike was a third label repeating the warning not to carry a passenger due to the risk of a loss of control causing severe injury or death.
26. These labels warning against unsafe use were in strong and unambiguous terms, and were prominently displayed on the vehicles. Despite this, at the inquest J's parents said they had not read the labels.

### **The permission to use the quadbikes**

27. On the morning of 5 March the girls first approached J's father R for permission to ride the quadbikes, but he refused. In his evidence he said he was tired from a long week's work and wanted to have a break. The girls then approached J's mother and eventually obtained her permission. According to J's mother, she was reluctant to allow such a number of girls to ride on only two quadbikes. She agreed on condition they rode only as far as a particular adjoining property, and that Myley rode only with her daughter J.
28. There is a factual dispute as to what other conditions J's mother placed on the excursion. J's mother gave evidence that she told the children they were not to exceed a speed of 20kph. This is at odds with statements made by two of the girls, V and BH. According to V, they were instructed to ride no faster than 25 kph around the homestead and 35 kph in the paddocks. In her statement BH said they were told to travel at 20-30kph only.
29. None of the five children wore a helmet for the ride. J's parents told the court that no one in their family was required to wear a helmet when using the quadbikes. However J's mother said that because Myley was so young, on this occasion she told J to make sure that M wore a 'hat', a term which she said the family used to mean a helmet. The court heard that the family's only two helmets were both adult sized. In her evidence J's mother conceded that such a helmet would not have fitted six year old Myley and could not have given her proper head protection. In any event, if the instruction was given it was not complied with by J.
30. When the children left the homestead at about 10.30am J's friend BG was operating the first quadbike, with V behind her as passenger on its single seat. One of the family's dogs travelled on the quadbike with them. J operated the other quadbike, with two passengers: Myley seated in front of J with her hands on the cross bar of the handlebars, and BH seated behind BG.
31. At the inquest J's parents were questioned about their understanding of the competence of J and BG when it came to operating quadbikes. Both said that their daughter J was experienced and confident in her handling of them. Her father told the court J had been riding motor bikes and quads since she was a young child. For the past 2 to 3 years she had been permitted to ride the farm's adult sized quadbikes on her own.
32. Regarding BG's competence, J's mother said there had been a conversation about this the previous evening. She said that BG had professed to be 'very

*competent* at riding quadbikes. J's mother understood this to mean large quadbikes. By contrast BG's mother provided a statement in which she said that BG had been taught to ride a 'small 2WD quadbike', which she was not allowed to ride without a helmet. She stated further that BG was not yet allowed to operate a large quadbike or other farm vehicle out of sight of adults.

33. None of the children was required to give evidence at the inquest. All are still under 16 years and continue to suffer the emotional effects of Myley's tragic death. As a result it was not possible to resolve the above factual discrepancies. However they are not matters which require definitive findings.
34. This is because, even taking the evidence of J's mother at its highest, there can be no question that the way in which the children were permitted to use the quadbikes on 5 March 2017 was wholly inappropriate and unsafe. It was entirely inconsistent with manufacturer instructions for their use, in the following critical ways:
  - adult sized quadbikes were being operated by children under the age of 16
  - they were being used to carry passengers
  - none of the riders was wearing a helmet.
35. It is clear that J's parents were aware that the children would be operating adult sized quadbikes, that they were going to carry passengers, and that they would not be using helmets with the possible exception of Myley (and if so, with a helmet which could not have afforded her proper head protection).
36. Furthermore it is apparent that J's parents took very limited steps to ascertain BG's competence to operate an adult sized quadbike. It must have been known to them further, that as this was BG's first visit to their property she would have lacked familiarity with the terrain over which they would be travelling.
37. I make these points not to cast blame and shame on J's parents. That is not the purpose of any inquest. These points are made to highlight that despite awareness campaigns warning against these behaviours, parents and carers continue to misuse quadbikes by allowing children to ride adult sized vehicles, and without helmets. More is said about this later in these findings.

### **The quadbike ride and V's recording of it**

38. In their statements to police the girls described their quadbike ride that morning. There is an additional source of evidence about it: V recorded parts of their ride from her position at the back of the quadbike operated by BG. She used her mobile phone camera, which she held in one outstretched hand. The inquest was shown nine short videos which she had recorded in this way.
39. The girls first spent some time riding around the paddocks, then travelled to another property to visit a cousin of J's. The evidence was unclear as to the travelling distance to this property. J's mother estimated it was about 3.5

kilometres away from their property, but her father thought it was more like a 5 kilometre distance.

40. At some point during the return trip Myley changed position, to sit in front of BG on the other quadbike. BG now had two passengers: Myley in front and V who remained sitting behind BG. The other quadbike continued to be operated by J, with BH as her passenger.
41. The video recording shows that the five girls were in high spirits, laughing, singing and calling out to each other as they rode. At different times J, BH and BG stand upright on their quadbikes and pose for V's camera. At one point J accelerates her bike down the track, to be followed at speed by BG. There are times when both quadbikes are ridden side by side with very little space between them.
42. Close in time to the fatal collision there is a chilling moment when BG appears to momentarily lose control of her steering, causing the bike to exit the track to the left and ride over ditches. The girls' voices cry out '*That was really scary*' and '*Oh my god, I was going to full on stack*'. Myley's voice can be heard repeating '*I hated that*'.
43. Any adult viewing the footage would conclude that the manner of riding by the girls was not safe. The appreciation of risk is heightened with the realisation that none of the children had head protection.
44. The purpose of these observations is not to lay blame on any of these children. J and her friends were only thirteen years old and it was natural for them to seek fun and adventure. But as thirteen year olds they clearly lacked the maturity needed to understand the risks as an adult would.
45. The fatal accident happened at 12.16pm while the girls were riding through a paddock, approximately 1.8kms from the homestead. They were travelling on a flat compacted dirt track which took a bend to the left towards a fence and gate. J's quadbike was ahead of BG's, and she stopped to allow BH to get off and open the gate. As BH was doing this she heard a loud bang behind her. She turned to see the other quadbike in the vegetation to the right of the track, rammed up against a large tree. BG, V and Myley were lying on the ground.
46. As V described it in her statement, their quadbike had failed to take the bend, left the track and headed straight into the surrounding scrub. It hit a tree and all three girls fell off. When V got to her feet she saw Myley on the ground with her body between the tree and the quadbike's rear wheel. Myley was lying very still and had a lot of blood coming from her nose and mouth. BG had fallen to the ground near her, and was not responding to V.
47. V's mobile phone was also on the ground with its screen facing the sky. It was still recording. The sound recording graphically conveys the horror and shock felt by V, BH and J. The three girls are screaming and crying out as they realise Myley is critically injured. In a state of panic they assist each other to move the unconscious Myley onto the other quadbike. A voice,

presumably that of the semi-conscious BG, maintains a high-pitched moaning throughout.

### **After the accident**

48. BH immediately rang '000', while J rang her mother. Leaving V with the injured BG, J and BH rode Myley about a kilometre to the road where J's parents had driven to meet them. They placed Myley in the back seat of the car, then the two girls returned to the collision site.
49. There they waited for the arrival of an adult neighbor, who placed BG into his ute and drove her to the MW homestead. BG had suffered a skull fracture and she was eventually airlifted to hospital for assessment and treatment.
50. At the MW homestead J's parents placed Myley onto the concrete floor of their car port. Myley was bleeding heavily from her nose and mouth and she was not moving. Guided by the phone instructions of an ambulance officer they made agonised efforts to resuscitate her.
51. Shortly after 1pm paramedics in two ambulances arrived from Wee Waa and Baradine. Ambulance Officer Thomas Birt noted that Myley had extensive head trauma with bleeding from the ears, nose and mouth and bruising around her eyes. At no time did Myley have spontaneous breathing, and the paramedics soon assessed her injuries to be unsurvivable. She was pronounced deceased at 1.19pm.
52. J's mother then had the unimaginably sad task of calling Myley's mother to tell her that her little daughter had died. She then waited next to Myley's body, which she covered with a blanket. Myley's shocked and distraught parents arrived soon afterwards. It was many hours before Myley's body was able to be removed. Throughout this time her mother remained by her side, inconsolable with grief.

### **The crash scene investigation**

53. Police officers from Wee Waa arrived at the MW property at about 1.40pm. They spoke to family members and helped with the medical airlift of BG. The official investigation was to be conducted by the NSW Police's Crash Investigation Unit, which was headquartered in Tamworth.
54. The Officer in Charge of the investigation was Senior Constable Gretel Robertson. She has been an officer with the Crash Investigation Unit since 2009. After a three hour drive from their Tamworth base she and Senior Constable Jamie Waugh arrived at the property at 6.20pm.
55. Out at the accident site SC Robertson examined the quadbike involved in the collision. She noted that it was hard up against a large tree which had bark ripped off it. There was blood at the base of the tree and at the rear of the quadbike. Foliage was embedded in the quadbike's damaged front grill area. There was other damage to various parts of the quadbike.

56. SC Robertson then examined the dirt track running through the paddock. She noted that just ahead of the collision site the entire width of the track was covered by debris from a fallen branch. Just before the track turned to the left she found a set of fresh tyre tracks which exited the right side of the track and led into the scrub. SC Robertson observed that these were consistent with the wheel span of the damaged quad bike.
57. The tyre tracks showed no sign of slippage or shift in the tyre rotation. On this basis SC Robertson concluded that its rider was unlikely to have steered the quadbike so as to follow the left curve of the main track, or to have applied brakes. Instead the quadbike had travelled from the left side of the main track to its right side then continued into the vegetation, colliding with and uprooting a small tree. This caused it to slow before its right side collided with a much larger tree.

### **Removal of Myley's body**

58. Before moving to the substantive issues of the inquest I will address a particular matter raised by Myley's parents.
59. It was a matter of great distress to Sheree and Joshua Maxwell that their daughter's body was not removed from the MW's property until just after 8pm that night. This was some seven hours after J's parents had brought her there after the crash. During this time her body lay on the ground of their car port, covered by a blanket. The rising distress of Myley's parents as the afternoon and evening wore on can only be imagined.
60. This painful delay appears to have due to a misunderstanding between the Officer in Charge SC Robertson, and the Duty Officer Inspector for the region, Inspector Robert Dunn. When notified of the crash Inspector Dunn travelled to the MW's property from Moree, arriving soon after 4.30pm. He was aware that officers from the Crash Investigation Unit were on their way but would not reach the site until later in the afternoon. They would be responsible for examining the scene, and on his understanding, would instruct the attending police as to when Myley's body could be moved.
61. However when SC Robertson arrived she told Inspector Dunn it had not been necessary for Myley's body to remain at the site, and that she had attempted to tell him this by mobile phone some hours earlier. She had been unable to get through and had not left him a phone message. Since Inspector Dunn was unaware of this advice he had assumed that Myley could not be removed. He noted that mobile coverage is unavailable in many areas of the region.
62. It is fair to note that during the long hours of the afternoon and evening Inspector Dunn did his best to make arrangements to ensure that Myley's body could be removed as soon as this was authorised.

63. The long delay in removing Myley's body seems to have been avoidable. There can be no denying that it added to the terrible ordeal Myley's parents endured that day, however far this would have been from the intention of any of the police officers involved.

### **The cause of Myley's death**

64. Forensic pathologist Dr Leah Clifton performed an external examination, concluding that the cause of Myley's death was '*blunt force head trauma*'. CT scans confirmed non-survivable head trauma with multiple skull fractures and bleeding within and on the surface of the brain. It is likely Myley died quickly.

### **What caused the crash?**

65. The court heard evidence on this issue from a number of witnesses.
66. Senior Constable Davenport is an experienced motor mechanic and a Forensic Examiner with NSW Police's Engineering Investigation Unit. He conducted an examination of the quadbike on 29 March 2017.
67. SC Davenport did not find any mechanical defect, other than the fact that three of the quadbike's four tyres were substantially deflated. It was not possible to establish whether they had been in this condition just prior to the accident on 5 March. Had they been, SC Davenport agreed this could have affected the quadbike's steering capability. SC Davenport commented that the tyres of a quad bike may be substantially deflated, yet appear to be quite rigid in their external appearance. I note that according to the evidence of JMW at the inquest, both quadbikes had received regular servicing.
68. The evidence is therefore unclear as to the whether or not the quadbike's tyres were in a deflated condition on the morning of 5 March and thereby contributed to the crash.
69. Mr Mark Collins also provided evidence about the possible cause or causes of the crash. Mr Collins has extensive knowledge of the vehicle handling qualities of quadbikes, through his role as ATV Manager at the Federal Chamber of Automotive Industries [the FCAI]. In this role he is closely involved in promoting the development of safety standards for quadbikes, and training programs for their users. He attended each day of the inquest, and on the final day gave useful evidence as to what may have caused the crash to happen.
70. Mr Collins adopted the opinion of SC Robertson that it was very unlikely BG had applied the quadbike's brakes or tried to steer it so as to follow the track's left curve. In Mr Collins' opinion the evidence could not establish a definitive reason why she had not done either of these things. Mr Collins considered that any one of, or a combination of, factors may have caused or contributed to this situation.

71. The most likely reason was that BG's ability to manoeuvre the quadbike around the bend was impaired by her having a passenger both in front of and behind her body. Mr Collins explained that manoeuvring quadbikes requires the learned skill of '*active riding*'. This refers to the operator shifting his or her body laterally and/or longitudinally on the seat, and vertically off the seat, while keeping both hands on the handlebars and both feet on the footrests. This is one of the reasons why quadbikes require a separate seat for passengers.
72. In Mr Collins' opinion other factors may have contributed to BG's inability to steer the quadbike around the bend, as follows:
- BG may not have had sufficient physical strength to steer the quadbike effectively, as she was only thirteen years old and it was an adult sized quadbike. It was not fitted with power steering.
  - BG would not have been familiar with the terrain they were riding, and may have panicked when she noticed the tree debris blocking the track ahead, referred to in paragraph 56 above. She may have lacked the expertise to slow the quadbike and gain time to find a path around it.
  - If she was panicking it was possible BG had applied pressure to the throttle located on the handlebar, causing the quadbike to miss the curve and accelerate straight ahead into the scrub.
73. At the end of the day it is not possible to determine precisely what caused the quadbike's failure to take the bend and crash into the scrub. There is however no escaping the fact that the children, with adult permission, were riding quadbikes that were not designed for them, and in ways which wholly disregarded critical instructions for their safe use.

**Were all relevant regulations complied with in relation to the riding of the quadbikes by the children?**

74. Although some of NSW's road transport laws govern the riding of quadbikes on public roads, these have no application at all in situations such as this where quadbikes are being ridden on private land. There was therefore nothing to prohibit the five children from riding the two adult sized quadbikes, without helmets, and in passenger configurations.
75. The situation is of course otherwise regarding compliance with manufacturer instructions. I have referred to the unequivocal nature of the instructions prominently displayed on the two quadbikes, and their importance in keeping riders safe. In this case the children were allowed to ride the quadbikes with entire disregard of these instructions, with tragic results.

## Should there be further regulations governing riders and passengers on quadbikes?

### Recommendations in previous inquests

76. In April this year there were two separate deaths of young children riding quadbikes. Although the coronial investigations into these tragic deaths are still at an early stage, the preliminary information is that both children were riding quadbikes that were not suitable for their age.
77. The safety of quadbikes, particularly when ridden by children, has been the subject of coronial interest for some years. This is due to the distressing fact, documented by SafeWork Australia, that of the 125 quadbike-related deaths in Australia between 2011 and 2018, 18 were of children aged under 16 years. According to the SafeWork research, in only 10% of the 125 deaths was it known that the rider was wearing a helmet.
78. Against this background inquests have examined proposals to increase safety for quadbike users, particularly children.
79. In 2015, NSW Deputy State Coroner Freund reviewed the quadbike deaths of nine people including three children in the *Inquest into the deaths of Eveleigh and others*. Although the deaths examined involved a range of circumstances, the safety issues overlap with those in the present inquest. The three child deaths, like that of Myley, involved use by the children of adult sized quadbikes. In most of the other six cases the users had failed to follow manufacturers' instructions that a helmet be worn and that passengers not be carried.
80. Her Honour made a range of recommendations, including some relating to vehicle design. Of particular relevance to the present inquest, she recommended that consideration be given to enacting laws:
- mandating that helmets be worn when using quadbikes
  - prohibiting children under 16 years from using adult sized quadbikes.
  - mandating training in the use of quadbikes.
81. It is important to note that the same recommendations were made in the 2015 inquest into nine quadbike-related deaths in Queensland, conducted by Deputy State Coroner John Lock. They were repeated in the 2017 *Inquest into the deaths of Heather Richardson and others*, in which Coroner Simon Cooper examined seven quadbike deaths in Tasmania.
82. In the present inquest I have focused on these three recommendations, which concern safe quadbike use rather than quadbike design. I take this approach because a critical factor in the circumstances of Myley's death was the willingness of adults to permit children to use quadbikes in ways which were so far outside their intended usage, and with entire disregard for the warnings prominently displayed on them. In Myley's case multiple children were riding a vehicle designed for a single adult, without helmets and without formal

training. In these circumstances it is difficult to see how any alteration of design standard would have made a difference to the tragic outcome.

83. The above three recommendations have not been implemented in NSW. This disappointing state of affairs and its underlying reasons are now examined.

#### The outcome of the three recommendations

84. In the 2015 inquest Deputy State Coroner Freund acknowledged that implementing these three recommendations raised broad issues of public policy and enforceability. In particular how were laws giving effect to them to be enforced, given that most quadbike use occurs on private land? Without amendment, road safety laws would not permit entry onto private property to enforce them.
85. It was for this reason that her Honour framed the relevant recommendations in terms that the NSW Law Reform Commission and the NSW Attorney General be responsible for considering how the legislation could be introduced. This approach recognised that the recommended changes would require careful legislative consideration and multiple agency co operation.
86. In the event, the NSW Attorney General declined to give the Law Reform Commission a reference to consider enactment of the recommended laws. This was on the basis of advice from the Hon Duncan Gay, then Minister for Roads, Freight and Maritime. By letter dated 27 April 2016 he advised that it was not appropriate to legislate in this manner because road transport law does not apply to private land. Mr Gay commented that:

*'.. regulating the operation of quadbikes ... for commercial purposes on private land falls within the responsibility of agencies established to ensure work health and safety such as SafeWork NSW ...'*

#### The problem of enforceability

87. It is acknowledged that if these recommendations are made, implementing them will require that issues of enforceability be worked through.
88. If laws are enacted which mandate helmet use and prohibit adults from allowing children to use adult sized quadbikes, then supporting legislation will be required which permits NSW police to enter private property to investigate and enforce such laws. However at the present inquest those representing the NSW Police Force resisted this proposal. Their concerns revolved around the likely flow on effects for rural and regional communities if police were permitted to proactively enter upon and remain on private land without a warrant.
89. For this reason, both in the 2015 inquest and the present one there was consideration of other ways of enforcing the reforms. One of these is by use of existing workplace safety legislation.

90. The *Work Health and Safety Act 2011* imposes an obligation on persons conducting a business or enterprise, such as farming, to ensure that the health and safety of 'other persons' is not put at risk from work carried out as part of the conduct of the business. Could these laws be utilised to extend liability to a business operator who allowed a child to use farm machinery such as an adult sized quadbike, in a recreational setting? Or to a business operator who allowed children to operate a quadbike without a helmet?
91. SafeWork NSW's response to the 2015 NSW recommendations did not directly address these questions. Instead its submission focused on public awareness campaigns with which it has been involved, promoting safe behaviours with quadbike use. These included use of helmets, child safety, and training for quadbike operation.
92. In the present inquest however, the response by SafeWork NSW to the same proposal was not encouraging. In a written submission Ms Fiona Miller, Acting Legal Director of the Department of Finance, Services and Innovation, responded that SafeWork NSW does not have jurisdiction to exercise its powers where the matter does not have a connection to work health and safety. It may be inferred from this response that SafeWork NSW does not support any interpretation of existing workplace laws which has the effect of extending the obligations of farm operators to include children using quadbikes in a recreational context.
93. The implementation of these recommendations is thus at a standstill. If new laws are enacted giving effect to them, NSW police officers would have the responsibility for enforcing them. However they lack the power to enter private lands to do so. SafeWork NSW officers are able to enter private property to investigate breaches of their legislation, but do not consider unsafe use of quadbikes in a recreational setting to be within their jurisdiction.
94. Thus the inaction continues, despite unequivocal evidence that:
- use of adult sized quadbikes by children is unsafe
  - use of quadbikes without a helmet is unsafe
  - parents and carers continue to allow children to use quadbikes in the above circumstances.

### **Should recommendations be made?**

95. Significant efforts have been made by safety authorities, quadbike manufacturers and quadbike distributors to promote safer use of quadbikes. The inquest heard evidence about public awareness campaigns, financial incentives to purchase quadbike helmets, and the availability of free or discounted training programs. And as I have noted, warning labels are prominently displayed on quadbikes which could not be clearer about the risks involved.
96. In light of this it was most discouraging to hear the evidence of J's parents that they had not read the warning labels on their quadbikes, that they were not aware of any advertising or awareness campaigns on the subject of helmet

use or children riding adult sized quadbikes, that they had a very limited understanding of the risks involved in such behaviours, and that they never required their children to wear helmets when riding quadbikes. The evidence of the Officer in Charge SC Robertson suggested these attitudes were not uncommon. She commented that in her experience families commonly allowed their children to use adult sized quadbikes, and without helmets. They seemed, she said, '*oblivious*' to the risks until a tragedy such as this occurred.

97. Why does there continue to be resistance amongst adults to complying with the safety instructions displayed on quadbikes? No doubt the reasons are multifactorial, including work practices on rural properties where children are usually needed to help with farm activities. In her 2015 findings Deputy State Coroner Freund identified another factor, namely the common perception that quadbikes are safe vehicles:

*'Essentially because they have four large wheels, and are stable when stationary, the evidence indicates that it was common for people to perceive quad bikes to be safe and stable vehicles, requiring little or no experience to operate'. (at par 173).*

This perception was borne out in the evidence of J's parents, that although they insisted their children wear helmets when using two wheel motor bikes they never did so with quadbikes.

98. I should note that in the present inquest the court received written submissions from FCAI and other industry groups which strongly supported mandatory use of helmets. Their submissions cited the abundance of evidence that while helmets cannot prevent all types of quadbike deaths and injuries, they do protect against a range of the risks that are present. Mr Collins told the court that a helmet design had recently been developed which was approved for quadbike and motorcycle use, and was lighter and better ventilated than previous models. This was in response to common complaints that existing models were too hot and heavy to be used comfortably.
99. The inquest into Myley's death raises broad issues of public policy. In particular, how is cultural resistance to important public safety reforms to be overcome? In a liberal democratic society such as Australia's, the approach of resorting to legislation which carries criminal sanctions is usually considered appropriate only when less coercive measures have proved ineffective. Behavioural change is encouraged through advertising, manufacturer labelling, awareness campaigns, and providing incentives for change. Yet the evidence is that of themselves, these measures have not succeeded in bringing about the changes in quadbike use that are needed.
100. Given the number of deaths that are still occurring, in my view these efforts to change attitudes and behaviour must be supplemented with mandated regulation. I accept there will be challenges in enforcement of that legislation. But continued inaction is simply unacceptable. Deaths such as Myley's are entirely preventable. It is time to move forward on the repeated

recommendations of those who have the enormously sad task of examining these tragedies.

### **Recommendations**

101. After reviewing the evidence received at the inquest and the submissions made by interested parties, I have determined to make the recommendations proposed by Counsel Assisting. My reasons appear above. The recommendations I make are as follows:

To the NSW Attorney General's Department:

#### Recommendation 1

That consideration be given by the NSW Attorney General to the introduction of legislation creating a criminal offence for adults who allow children under the age of 16 to ride adult-sized quadbikes.

#### Recommendation 2

That consideration be given by the NSW Attorney General to the introduction of legislation creating a criminal offence for adults who allow children under the age of 16 to ride any quadbike without a helmet.

#### Recommendation 3

That consideration be given by the NSW Attorney General to making the necessary amendments to legislation to allow police to enter private property to investigate the above offences, where there is a reasonable suspicion that an offence has been committed.

#### Recommendation 4

That consideration be given by the NSW Attorney General to the introduction of legislation requiring mandatory licensing of all persons using adult sized quadbikes (ie all persons over the age of 16).

#### Recommendation 5

That a working group comprised of appropriate representatives from NSW Government, SafeWork NSW, NSW Police and non-government industry groups be formed to consider:

- a) how any new requirements regarding the use of adult sized quadbikes should be implemented
- b) how any new requirements relating to the use of adult sized quadbikes should be enforced
- c) what education campaign is likely to be effective in changing attitudes and behaviour relating to the use of children by quadbikes in a manner that poses an unacceptable risk to their safety.

102. Regarding Recommendation 4, there already exists a requirement for licensing of persons who use quadbikes on roads and road-related areas. This legislation does not apply to the use of quadbikes on private property. The aim of the recommendation is to ensure by means of a mandatory

licensing scheme that quadbike users receive proper training in their use, and are made aware of common errors and behaviours which contribute to crashes.

103. Those assisting the inquest sought a response to proposed Recommendations 1- 4 from NSW Police, SafeWork NSW, FCAI, Polaris Sales Australia Pty Ltd (the largest manufacturer of quadbikes), and the Maxwell and MW families. I have noted above the concerns about enforceability raised on behalf of NSW Police and SafeWork NSW. FCAI strongly supports these recommendations. Formal responses were not received from the two families, but at the inquest both families indicated they supported measures which would reduce quadbike deaths and injuries.

### **Conclusion**

104. In closing, on behalf of us all at the Coroners Court I offer the Maxwell family our most sincere sympathy for the loss of their little girl.
105. I thank those assisting the inquest for their outstanding assistance, as well as those who represented the Maxwell and MW families, and other interested parties. I also express my thanks to Mr Mark Collins of the FCAI for his assistance.
106. My thanks too to the Officer in Charge SC Gretel Robertson, for her work in conducting the coronial investigation.

### **Findings required by s81(1)**

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

#### **Identity**

The person who died is Myley Maxwell born 14 May 2010.

#### **Date and place of death:**

Myley Maxwell died on 5 March 2017, at Gwabegar, NSW 2356.

#### **Cause and manner of death:**

Myley Maxwell died of blunt force head trauma, when the adult size quad bike on which she was a passenger collided with a tree, causing her to receive fatal head injuries.

I close this inquest.

#### **E Ryan**

Deputy State Coroner, Lidcombe

**Date** 9 May 2019