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Response to:

Quad Bike Safety Standard Exposure Draft

7 June 2019

Executive Summary

Honda is a global leader in the design, manufacture, sales and service of ATV and SSV vehicles. Last year in Australia, Honda sold over 4,500 ATVs and SSVs. Honda is the biggest supplier of the ATVs described by the ACCC as 'general-use' types.

In the Final Recommendation, the ACCC proposed three options, with a preference for, and draft mandatory standard based upon, the third option.

From a practical perspective, the draft mandatory standard in its current form is problematic. As examples:

- An ATV which meets ANSI/SVIA 1-2017 standards may not comply with the draft mandatory standard to 'meet the specified requirements of the US quad bike standard.'
- The transition arrangement may leave the dealer network with a majority of unsaleable stock which is not compliant, and with no way to make it compliant.
- Section 15 creates conflicts around consumer guarantees, exposing manufacturers to significant legal claims whilst also depriving riders injured by an OPD of any remedy.

Honda believes that the proposed regulation to mandate OPDs is not scientifically supported nor evidence based. Honda respectfully requests that Option three not be adopted.

Honda supports adopting the ANSI/SVIA 1–2017 US Standard for ATVs in association with adopting the following key safety requirements:

1. Mandating helmets for all ATV riders.
2. Mandating rider training.
3. Banning children under 16 years of age from riding adult size ATVs.

Honda also supports:

1. Minimum stability standards which are evidence-based, in both criteria and testing methods, to internationally accepted standards.
2. Additional safety warning label.

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List of Abbreviations

ANSI	American National Standards Institute
ANSI/SVIA 1–2017	American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements (2017 version)
ATV	All-Terrain Vehicle as defined by ANSI/SVIA 1–2017
BMSB	Brown Marmorated Stink Bug (<i>Halyomorpha Halys</i>)
CPD	Crush Protection Device
CPSC	United States Consumer Product Safety Commission
DRI	Dynamic Research, Inc. (USA)
FCAI	Federal Chamber of Automotive Industries
FS5100-1d	United States Department of Agriculture Forest Service Standard for Spark Arresters for Internal Combustion Engines 5100-1d February 2013
HART	Honda Australia Rider Training
IRS	Independent Rear Suspension
OPD	Operator Protection Device, including CPD
Quad	ATV
ROHVA	United States Recreational Off-Highway Vehicle Association
SSV	Side by Side vehicle
SVIA	Speciality Vehicle Institute of America

1. Introduction

1.1 About Honda

1.1.1 Global Business

Honda Australia Motorcycle and Power Equipment Pty Ltd is a wholly owned subsidiary of Honda Motor Co. Ltd. (Japan) a recognised world leader in ATV and SSV vehicles. Last year, Honda subsidiaries manufactured and sold more than 125,000 ATVs and SSVs worldwide. Honda manufactures ATVs and SSVs primarily in the United States, exporting complete built units (CBU) to Australia and global markets.

1.1.2 Local Business

In Australia, Honda sold over 4,500 ATVs and SSVs last financial year¹. Honda is the largest supplier of utility ATVs in Australia², selling 2,903 units in 2018. Honda's market share in the utility ATV category is approximately 32%. Honda is also a significant brand for SSVs in Australia³, selling 1,430 units in 2018 with a market share of 20%.

Honda's nationwide sales and servicing network includes 150 independent franchised dealers employing well over 1,000 Australians involved in retail, skilled trade and semi-skilled activities. Honda ATV and SSV business is estimated to have generated more than \$68 million of business in regional and rural areas⁴. Dealers in this area are highly dependent upon ATV business.

Honda customers and dealers are the most affected by any activities related to utility ATVs as Honda is the largest supplier.

1.1.3 Commitment to Safety

Honda's steadfast commitment toward motorcycle, ATV and SSV safety is well recognised. Honda is the only distributor in Australia with a dedicated and wholly owned training subsidiary – HART (Honda Australia Rider Training).

HART is the largest provider of motorcycle rider training in Australia, in addition to providing ATV and SSV training services and road education programs. HART conducts ATV training for the Australian Antarctic Division and ATV and SSV training for various Government Departments, as well as the farming community.

Honda is deeply concerned for the welfare of our ATV and SSV customers. Honda in association with the FCAI actively promotes and advocates the adoption of key safety practices as recommended by three coronial inquiries since 2014:

1. Mandating helmets for all ATV riders
2. Improving and mandating rider training
3. Banning children under 16 years of age from riding adult size ATVs

¹ FCAI retail market data calendar year 2018

² FCAI retail market data calendar year 2018. Category AG* (Agriculture ATV)

³ FCAI retail market data calendar year 2018. Category SU* (SSV)

⁴ Estimated value of new ATV & SSV sales, parts and servicing - excluding second-hand and non-Honda parts and accessories

Honda has a dedicated ATV Sales Standard for the franchised dealer network, which includes taking specific steps to provide ATV customers with safety information and materials before delivering ATVs.

1.2 Associations and Affiliations

Honda Australia Motorcycles and Power Equipment Pty Ltd is a member of the FCAI. Internationally Honda or its affiliates are members of the SVIA.

1.3 Notes about 'Honda'

This document was prepared and written by Honda Australia Motorcycle and Power Equipment Pty Ltd (Australia).

2. Responses to Final Recommendation and Draft Mandatory Standard

This document separates the elements of the draft mandatory standard into six areas, as described on page 109 of the Final Recommendation. Those six areas are:

(All quad bikes supplied in Australia)

1. Meet the specified requirements of the US quad bike Standard, ANSI/SVIA 1–2017 or the EN 15997:2011 Standard
2. Be tested for lateral static stability and display result in the form of a hang tag at the point of sale
3. Have a label affixed in a visible position whilst the quad bike is being ridden that alerts riders to the risk of rollover
4. Include rollover safety information in the owner’s manual

(All general-use model quad bikes)

5. To be supplied with operator protection devices
6. To meet minimum stability requirements of:
 - Lateral stability—a minimum TTR of 0.55
 - Front and rear longitudinal pitch—a minimum TTR of 0.8.

1. Meet the specified requirements of the US quad bike Standard, ANSI/SVIA 1–2017, or the EN 15997:2011 Standard

An ATV which meets ANSI/SVIA 1-2017 standards may not comply with the draft mandatory standard.

This draft mandatory standard is substantially different from the approach taken by the ACCC in the Consultation RIS where ‘the ACCC is of the view that adopting the US standard will be beneficial in aligning Australia with other global markets’⁵. It is also contrary to the statement in the Final Recommendation where ‘The adoption of these standards will also align Australia with other global markets.’⁶

The reason why an ATV which meets ANSI/SVIA 1-2017 standards may not comply with the draft mandatory standard is that the draft has proposed a different standard for spark arrestors. Unlike adding a label or hang tag, the spark arrestor is a design change. Meeting the US standard does not automatically meet the Australian standard as the requirements differ. Manufacturers will have to develop a new model specification to meet the unique Australian regulation.

⁵ ACCC - Quad bike safety: Consultation Regulation Impact Statement, March 2018, Page 27

⁶ ACCC - Quad bike safety: Consultation Regulation Impact Statement, March 2018, Page 51
Accessed 30 May, https://consultation.accc.gov.au/product-safety/quad-bike-safety-draft-regulation-impact-statement/supporting_documents/Quad%20Bike%20Safety%20%20Consultation%20Regulation%20Impact%20Statement.PDF

The timeline to meet this standard (12 months after the instrument commences) is unreasonable and likely to make dealer stock non-compliant. Recognising the procurement lead time is around six months (four months order to production, and two months shipping from the US East Coast including BMSB fumigation), this provides only 6 months to develop, design, endurance test and manufacture an engine-related part.

Honda recommends any standard should accept ANSI/SVIA 1-2017 without modification.

In the case that this is not accepted, then FS5100-1d should be allowed as an alternative to AS1019-200.

In the case that this is also not accepted, the timeline should be based upon the import date, rather than supply date, and that a reasonable lead-time be provided to develop models to meet a unique standard. Honda provided this information in our submission to the consultation RIS:

The transition period (for specification changes like muffler design) must be at least 36 months.

- Any regulation should be based upon the date of import to Australia

2. Be tested for lateral static stability and display result in the form of a hang tag at the point of sale

Dealers are likely to have substantial stock of unsaleable units, as the basis for the compliance date with the standard is unreasonable.

ATVs follow the US custom of a creating a new model year, every year. Each new model year will be tested to the standard before they are released to the market.

Due to business and climatic conditions, dealers often have stock of prior model year ATVs. As an example, as of 29 May 2019, 65% of Honda ATV dealer stock was not current model year. The value of this non-current stock to the Honda dealer network is at least \$4.4 million⁷. The 12 month window is far too short for dealers to sell out of prior year models.

Any regulation should be based upon the date of import to Australia. Dealers will not have the option to add hang tags to old year model stock, as the prior year models will not have been tested.

⁷ Applying the current average recommended retail price of a Honda ATV in Australia (\$10,200 including GST)

3. Have a label affixed in a visible position whilst the quad bike is being ridden that alerts riders to the risk of rollover

Honda accepts that there is a possible benefit in applying a specific warning label about the risk of rollovers.

However, as previously advised to the ACCC, the proposed text in the draft mandatory standard is not factually correct. Honda proposes the following warning to be more appropriate:

“WARNING!
ROLLOVERS COULD RESULT IN DEATH OR INJURY
AVOID SUDDEN, SHARP TURNS, EVEN ON FLAT TERRAIN
AVOID STEEP INCLINES
AVOID RIDING ACROSS SLOPES
PLAN YOUR RIDE”

The draft mandatory standard wording is different to the phrase in the Final Recommendation. The draft says:

‘A warning (the **rollover warning**) in the form, and with the content, required by this section must be fixed to a quad bike so that, when the quad bike is used, it will be clearly visible and legible.’

The wording of the draft is more reasonable, as affixing a label to be visible whilst *being ridden* is more difficult to achieve.

4. Include rollover safety information in the owner’s manual

Honda owner’s manuals already contain a number of warnings regarding the risk of an overturn, including in cases of operation on unfamiliar or excessively rough, slippery or loose terrain, turning improperly, operating on excessively steep hills and climbing hills improperly.

5. To be supplied with operator protection devices

The structure in the draft mandatory standard makes it impossible for Honda, and most probably any manufacturer, to meet the standard. The draft conflicts with other legislation enforced by the ACCC, and exposes manufacturers to high levels of legal uncertainty.

To explain this position, this section considers each of three options within Section 15 of the draft in the context of applying to a Honda ATV.

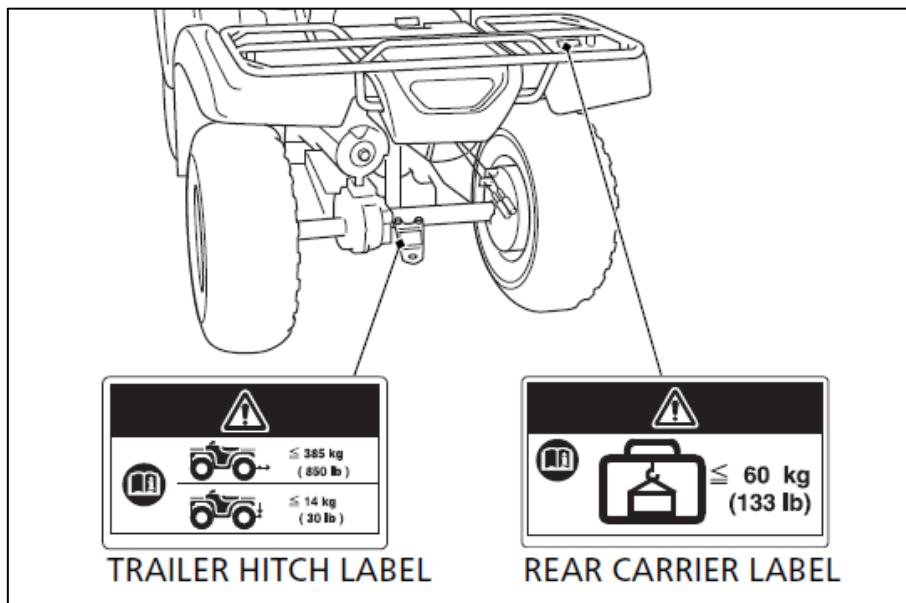
15 General use quad bikes—operator protection devices

A general use quad bike must have one of the following devices fitted, or integrated

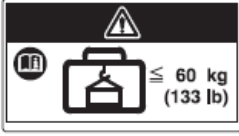
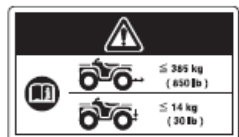
into its design:

- a) an ATV Lifeguard, in the model manufactured by Ag-Tech Industries Ltd. (New Zealand) and available for supply when this instrument commences;
- b) a Quadbar, in the model manufactured by QB Industries Pty Ltd. and available for supply when this instrument commences;
- c) a device of a type that offers the same, or better, level of protection for operators from the risk of serious injury, or death, as a result of being crushed or pinned in the event of a rollover, as is offered by a device of a type mentioned in paragraph (a) or (b).

To understand the context for options (a) and (b), please refer to the warning labels related to the rear carrier and trailer hitch for a Honda TRX420FM2. A typical Honda model.



(continued on next page)

	REAR CARRIER LABEL WARNING Overloading this ATV or carrying cargo improperly can change handling, stability and braking performance and can lead to an accident. Never exceed the maximum rear cargo limit (combined weight on the rear rack and in the storage area) of: 60 kg (133 lb) Refer to instructions in the Owner's Manual.
	TRAILER HITCH LABEL WARNING Towing an improperly loaded trailer can cause loss of control. <ul style="list-style-type: none">• Read towing instructions in Owner's Manual.• Tow weight limit: 385 kg (850 lb)• Tongue weight: 14 kg (30 lb)

The kerb weight of this TRX420FM2 model is 283kg. The rear carrier is rated to carry 20% of this static kerb weight. The trailer hitch tongue is rated to carry just 5% of the kerb weight.

Regarding options (a) and (b) of the draft standard, it is important to understand where and how these devices are fitted to ATVs.

- a) A Lifeguard is mounted to the rear carrier of an ATV.
 - The weight this OPD must support in a rollover scenario (ie, the weight of the vehicle) is more than four times this recommended rear-carrier limit. Clearly this is at odds with the requirement that products be 'fit-for-purpose' under the Australian Consumer Law - legislation that the ACCC is responsible for administering.
- b) A Quadbar is mounted to the trailer hitch tongue.
 - The weight this OPD must support in a rollover scenario is more than 20 times the hitch tongue recommended limit. Clearly this is at odds with the requirement that products be 'fit-for-purpose' under the Australian Consumer Law - legislation that the ACCC is responsible for administering.

If Honda were to fit either a Lifeguard or a Quadbar to its ATVs in compliance with option (a) or (b), that device would, as a "component part of or accessory to" the ATV, form part of the ATV for the purposes of the Australian Consumer Law. Thus, a person who suffers an injury caused by the Lifeguard or Quadbar could make a claim against Honda under Part 3-5 of the Australian Consumer Law on the basis that the ATV has a "safety defect" (ie, the OPD) and/or under Part 5-4 on the basis that, as noted above, the mounting arrangements on the ATV for the device are not fit for purpose. However, while it would be a defence to a Part 3-5 claim that the safety defect existed only because of the product standard (and so the injured person would have no remedy), no such defence would be available to a Part 5-4 claim.

It is self-evident why neither option (a) nor (b) can be accepted by the manufacturer.

Option (c) presents an unacceptable uncertainty for the manufacturer and for the regulator.

- c) a device of a type that offers the same, or better, level of protection for operators from the risk of serious injury, or death, as a result of being crushed or pinned in the event of a rollover, as is offered by a device of a type mentioned in paragraph (a) or (b).*

The level of protection offered by alternatives (a) or (b) has not been defined. Therefore the standard which an option (c) device must meet or exceed cannot be ascertained.

Whereas DRI has made scientific efforts to measure the level of protection that the Quadbar (Option (b)) offers, the ACCC have not accepted the result. The ACCC state in the final report (p.71) 'The relative efficacy of after-market OPDs compared to OPDs integrated into the device of a vehicle is not known.'⁸

6. To meet minimum stability requirements

In responding to the Consultation RIS, Honda made the following comments:

'A static stability test is fair and reasonable, as it is determined accordingly with height of mass centre and the position of the wheel.

- However, the criteria are not appropriate. The proposed weighting factors and criteria are determined by the subjective and unqualified opinions of the author.
- Honda encourages adoption of existing static stability test procedures as found in ROHVA, OPEA, SVIA, EU EN15997, and EU pr EN 16990.'

The reasons for determining these minimum criteria are unknown. Honda cannot accept criteria when the safety threshold is unknown

⁸ ACCC - Quad bike safety: Final Recommendation to the Minister, February 2019, Page 71
Accessed 30 May 2019, https://consultation.accc.gov.au/product-safety/quad-bike-safety-standard-exposure-draft/supporting_documents/Quad%20bike%20safety%20%20Final%20Recommendation%20to%20the%20Minister.pdf

3. Conclusion

Honda publicly announced on 2 May 2019 that it will stop selling ATVs in Australia if the draft standard becomes law in its current form. The standard is proposed to improve farmer ATV safety but Honda believes it is instead flawed, unworkable and may put farmers' lives at greater risk. Rather than relying upon demonstrated scientific evidence, the ACCC is proposing a standard which, in effect, is experimenting with farmers' lives.

Honda calls on the ACCC to make safety recommendations which are evidence-based, in both criteria and testing methods, to internationally accepted standards.

4. Contact Person

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