



June 6, 2019

VIA ELECTRONIC SUBMISSION (qbtaskforce@accc.gov.au)

Director
Quad Bike Taskforce
Consumer Product Safety Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra, ACT 2601

**Re: Consumer Goods (Quad Bikes) Safety Standard 2019 –
Comments to the Exposure Draft**

Dear Sir or Madam:

The Specialty Vehicle Institute of America (SVIA), a national not-for-profit trade association representing manufacturers and distributors of all-terrain vehicles (ATVs or quad bikes) in the United States, respectfully submits these comments on the Exposure Draft of the Australian Consumer Goods (Quad Bikes) Safety Standard 2019.

Executive Summary

- **ATV vehicle designs in the Australian marketplace have been heavily studied and found safe.**
- **The proposed changes to ATV vehicle design and fitment may increase the risk of injuries and fatalities, and have other unintended consequences.**
- **Reductions in ATV-related accidents and injuries can be achieved through rider education and training, promoting use of helmets and other protective gear, and restricting children under 16 from operating adult-sized ATVs.**

U.S. Safety Standards

The United States represents the largest market for ATVs in the world. ATV safety has been an important and heavily researched topic in the U.S. since ATVs became popular in the 1980s. As a consumer product, ATVs fall under the jurisdiction of the U.S. Consumer Product Safety Commission (CPSC), an independent federal agency. The CPSC has devoted a great deal of time and resources to the examination and testing of ATVs, including various proposed design changes focusing on lateral and pitch stability, and on operator protection in the event of a rollover. The CPSC also has investigated human factors and the impact of rider activity on vehicle dynamics.

In 1985, SVIA began developing an industry standard establishing requirements for equipment, configuration, and performance of ATVs in the U.S. In 1990, the American National Standards Institute (ANSI) approved SVIA's standard as the first voluntary industry standard for ATVs. The ANSI/SVIA standard has been periodically updated to include additional provisions for new categories of ATVs, as well as requirements for labels, owner's manuals, hang tags, and compliance certification labeling. The current standard (ANSI/SVIA 1-2017) also includes provisions regarding vehicle conspicuity and the use of non-pneumatic tires. Pursuant to an act of Congress, in 2008 CPSC adopted the ANSI/SVIA standard – and each subsequent revision – as the nationwide mandatory ATV safety standard in the United States.¹

U.S. Rider Training and Safety Programs

In addition to its leadership role in standards setting, SVIA advocates for safe and responsible use of ATVs through rider programs, public awareness campaigns, and legislative initiatives. In 1988, SVIA formed a division called the All-Terrain Vehicle Safety Institute (ASI), which provides hands-on and online safety education and training courses for adults and children. SVIA also promotes the use of helmets and protective gear, model legislation related to education and training, and restrictions on the operation of adult-size ATVs by children under age 16, while also seeking to prohibit the operation of ATVs on public roads, the carrying of passengers on single-rider ATVs, and the operation of ATVs under the influence of alcohol or drugs.

U.S. Success in Materially Reducing Fatalities and Injuries

Industry and regulatory efforts, such as the adoption of safety standards and consumer safety education and training, have led to significant overall reductions in both the rate and the total numbers of ATV-related fatalities and injuries. CPSC reports that from 1985 to 2011, four-wheel ATV fatalities declined from 1.5 to 0.6 fatalities per 10,000 vehicles in use. The annual number of reported ATV-related fatalities has declined steadily: 832 in 2007; 720 in 2009; 622 in 2011; 590 in 2013; 484 in 2015; and 337 in 2016, the latest year for which complete data is available.² The annual number of hospital emergency department-treated ATV-related injuries also has declined – down 33% between 2007 and 2016.³ **CPSC's data demonstrate that the U.S. consumer protection approach, when paired with consumer education and training, is working.** With continued emphasis on education and training, further reductions in fatality and injury rates can be achieved.

Comments on the Exposure Draft

SVIA appreciates this opportunity to offer these comments, and hopes that its comparative perspective on the Australian and U.S. ATV markets can be of benefit. While there are differences between those markets, the similarities and the global nature of ATV manufacturing

¹ Consumer Product Safety Improvement Act of 2008, Public Law 110-314 (Aug. 14, 2008).

² CPSC 2016 Annual Report of ATV-Related Deaths and Injuries, December 2017, at 7.

³ CPSC 2016 Annual Report of ATV-Related Deaths and Injuries, December 2017, at 17.

support a common approach. Indeed, in its Final Recommendation to the Minister regarding ATV safety, the ACCC recognized the significant role played by the U.S. in the global ATV market, including the fact that most ATVs intended for global sale are designed and manufactured to satisfy the U.S. ATV standard. The ACCC also noted that the European Union's ATV safety standard (CEN EN 15997:2011) is based on the ANSI/SVIA standard.

SVIA is deeply concerned that the measures and design changes proposed by the ACCC lack scientific support regarding their efficacy in enhancing safety. **Such measures ultimately may harm Australian ATV riders, while adding undue burden upon manufacturers and additional costs to consumers.**

Operator Protection Devices (OPDs)

The proposed integration of OPDs into the design of general-use ATVs may increase the risk and severity of injury to ATV riders, degrade vehicle dynamics, and impede rider-activity that is necessary for safe ATV operation. CPSC's own engineering studies recognize that rollover protection devices can impose undesirable restraints on the rider-active movements required for safe ATV riding, and also adversely influence vehicle stability due to increased center-of-gravity height.⁴ The CPSC has also noted the infeasibility of using OPDs in the absence of physical restraints that would prevent operators from exiting the zone of protection that may be created by some OPDs.⁵ The ATV rider must be able to move forward and backward, and side to side, in order to control the vehicle. Physical restraints must allow for such movement, and protective devices would need to increase in size accordingly. With resulting increased vehicle dimensions, obstacle clearances would be reduced, center-of-gravity height increased, and overall utility and safety decreased. In rollover incidents, OPDs could inhibit operator separation from the vehicle and/or strike an operator, causing or compounding injuries and possibly resulting in fatalities.

SVIA is not aware of any scientifically valid, peer-reviewed study showing that the use of OPDs would provide greater protection or overall safety than fitting no OPD at all. To the contrary, the weight of the evidence supports the view that OPDs provide no net safety benefit, and in any case no benefit sufficient to justify a requirement for fitting of any OPD currently available on the market. The coronial reports referenced by the ACCC support this conclusion.⁶ With respect to the specific OPDs mandated in Part 3, Section 15, of the proposed Safety Standard, rigorous analysis of limited studies assessing the Quadbar and other OPDs has been conducted in Australia, has identified serious shortcomings in such studies, and has concluded that:

- The Quadbar and other OPDs do not reduce serious or fatal ATV injuries.
- The Quadbar and other OPDs do not improve ATV safety.

⁴ Notice Terminating Advance Notice of Proposed Rulemaking, 56 Fed. Reg. 47166, 47172 (Sept. 19, 1991).

⁵ Id.

⁶ See Findings, Recommendations and Comments of Coroner Simon Cooper (Tasmanian inquest) (August 25, 2017), paragraph 165, at pp. 32-33 (assessing the findings of both the New South Wales and Queensland inquests).

- The Quadbar and other OPDs may actually result in net harm to ATV riders.
- The Quadbar and other OPDs should not be recommended as safety devices.⁷

The proposed Safety Standard would allow other devices offering “the same, or better, level of protection...” as the two identified models – all of them equally untested and unproven.

Minimum Stability Requirements

The proposed requirement for ATVs to meet minimum performance standards for mechanical suspension, stability and dynamic handling is, with respect, likewise ill-advised. Such proposals appear to be rooted in the ACCC’s presumption that the design of ATVs is somehow deficient, or that their performance characteristics in certain reasonably foreseeable uses and misuses are inadequate. Empirical data have not borne out such presumptions. Numerous CPSC studies on this subject have uniformly indicated that the overwhelming majority of ATV-related deaths and injuries are due to operator behavior as the primary contributing factor. **The CPSC has found no statistical correlation between ATV lateral stability and the risk of injury, and could not conclude that a standard requiring an increase in lateral stability would significantly reduce ATV deaths and injuries.** The proposed design changes could also have unintended consequences, including creating a false sense of security that leads to more aggressive operation, or other vehicle misuse.

In summary, after extensive investigation, the safety, versatility and benefits of the ATV’s basic vehicle design and engineering have been consistently proven. The vast majority of ATV users in the U.S. operate the vehicles, both for utility and recreation, in a safe and responsible manner. Although a small percentage of operators are involved in injury-producing accidents, the empirical data show that the risks associated with ATVs arise primarily from operator inexperience and misuse of the vehicles, and not from the basic vehicle design.

Open Differentials

SVIA agrees with the ACCC’s final recommendation against a safety standard that would require ATVs to have the capacity for all wheels to rotate at different speeds (see ACCC Final Recommendation at p. 95). **There is no direct, consistent correlation between open differentials and rider safety. In fact, an open differential can be undesirable and unsafe.** The CPSC has found that an open differential is not desirable for riding on uneven terrain at higher speeds, concluding that automotive-type differentials -- where the differential allows one wheel to increase speed significantly over the other -- are undesirable for off-road ATV use and can cause the ATV to lose traction or lurch sideways. When climbing a steep grade on a vehicle with an open differential, if one tire slips, the vehicle may lose all forward drive and fail to climb. And, in near-limit cornering, the outer wheel may stop spinning and unexpectedly gain traction.

⁷ See Dynamic Research, Inc.’s Review of Myers’ Papers on the Effectiveness and Potential Benefits of the Quadbar on All-Terrain Vehicle Injuries and Fatalities, by S.A. Kebschull (December 5, 2018), attached hereto as Exhibit A.

Complementary Measures - Helmets, Safety Gear and Child Use of Adult ATVs

SVIA encourages the Australian State Governments to take an active role promoting safe ATV operation through proven effective measures, similar to the efforts made in the U.S. by the CPSC and SVIA. The U.S. experience has shown that reductions in ATV-related accidents and injuries will be best achieved through: (1) the use of protective gear, including helmets; (2) restricting children under 16 from operating adult-sized ATVs; (3) greater adult supervision of children operating youth-model ATVs; and (4) rider education and training programs that promote safe and responsible ATV use. In contrast, the vehicle design and fitment proposals outlined above are not adequately considered or tested, would adversely affect ATV operation and performance, increase the risk of injuries and fatalities, and have other unintended consequences. Such proposals should therefore be rejected.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Pritchard". The signature is fluid and cursive, with a large initial "E" and a long, sweeping underline.

Erik Pritchard
President & General Counsel

EXHIBIT A