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10 October 2024

Coroner David Ryan (Team 14)
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

By email cpuresponses@coronerscourt.vic.gov.au

Dear Coroner Ryan (Team 14)

Investigation into the death of Frankie Foulkes

I refer to your letter of 6 August 2024 addressed to the Australian Competition and Consumer Commission (ACCC) in relation to the death of Frankie Foulkes. We note the coronial findings and the following recommendation directed to the ACCC.

That the Australian Competition and Consumer Commission commence a review of mandatory standards regarding child restraint systems for use in motor vehicles, in consultation with relevant expert stakeholders such as Mobility and Accessibility for Children in Australia Ltd, the Royal Children's Hospital, Transport Accident Commission (TAC), the Department of Transport and Planning, and interstate equivalents, for the purpose of:

- a. developing standards that ensure the adequate testing and safety of special purpose car restraints; and*
- b. revising existing standards to facilitate the availability of a broader range of car restraints in Australia which meet the needs of children with complex medical conditions and/or disability.*

The ACCC is saddened to hear of Frankie's death, and notes we were not previously aware of this incident.

Further background information and responses to your recommendation in relation to the death of Frankie Foulkes are set out below.

Background

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the

competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CCA), regulate national infrastructure and undertake market studies. The Australian Consumer Law (ACL) is part of the CCA, and provides for a range of consumer protections, including in relation to the safety of consumer goods.

The ACCC's role in relation to product safety is to identify and address the risk of serious injury and death from safety hazards in consumer products. Among the consumer protections available under the ACL are provisions which allow for the making, or declaring, of mandatory consumer product safety or information standards. A full list of [mandatory product safety standards](#) and [bans](#) currently administered by the ACCC is available on the ACCC's Product Safety website.

Each year, the ACCC publishes its [Product Safety Priorities](#), which set out the ACCC's key areas of focus in consumer product safety and how they will be addressed. The ACCC directs its resources to matters that provide the greatest overall benefit to the Australian community and is unable to pursue all product safety matters that come to its attention. Safety of young children's products is a 2024-25 priority.

The mandatory standard for child restraints

[Consumer Protection Notice No.3 of 2014](#) sets out the mandatory requirements for the legal supply of child restraint systems for use in motor vehicles. It does not apply to the legal use of child restraints; State and Territory road safety authorities administer laws that govern which child restraints can be legally used in each jurisdiction.

The mandatory standard was last reviewed and updated in 2014 and is based on the voluntary Australian/New Zealand standard AS/NZS 1754. The mandatory standard specifically excludes child restraints designed for children with a disability. This exclusion was applied following a 2007 review of the mandatory standard which included stakeholder consultation. During this review, stakeholders described market confusion in complying with AS/ZNS 1754 as far as it related to child restraints for children with a disability, resulting in a reluctance to supply these types of restraints.

The individual needs of disabled children are highly variable and must be matched to appropriate restraints following careful consideration by medical professionals and the child's parents or guardians of the safety of the individual child and the available transportation options. Selection of a child restraint for use by a child with complex medical conditions would require similar careful consideration. Child restraints that comply with the mandatory standard may not be suitable for children with disabilities or complex medical conditions.

The ACCC considers that regulating child restraints for children with disabilities or special medical needs may inadvertently restrict the supply of these specialised and important products and limit the options available to medical professionals and parents.

Upcoming review of the mandatory standard for child restraints

The voluntary standard AS/NZS 1754, on which the mandatory standard is based, is currently under review by Standards Australia. Once that review is complete, the ACCC intends to commence a review of the mandatory standard. The review of the mandatory standard will include a public consultation process and we intend seeking stakeholders' views on whether to continue the existing exemption for child restraints designed for children with a disability. We will also consult directly with expert stakeholders including the Mobility and Accessibility for Children in Australia Ltd, Royal Childrens Hospital, Transport Accident Commission, and the Department of Transport and Planning and similar bodies in other jurisdictions.

Thank you for raising these important issues with the ACCC. Should you wish to discuss this matter further, please contact me [REDACTED]

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nick O'Kane', with a horizontal line extending to the right.

Nick O'Kane
A/g General Manager
Risk Management and Policy
Consumer Product Safety Division
Australian Competition & Consumer Commission