



Ref: BSEC-1-24-5023

Coroner David Ryan
C/o Ms Nicole D'Rozario
Coroners Court of Victoria
65 Kavanagh Street
Southbank VIC 3006
cpuresponses@coronerscourt.vic.gov.au

COR 2023 002444

Dear Coroner Ryan

RESPONSE TO CORONER'S INVESTIGATION INTO THE DEATH OF FRANKIE FOULKES

I refer to your letter of 6 August 2024 regarding the findings of the Response to Coroner's Investigation into the death of Frankie Foulkes.

The Department of Transport and Planning (DTP) extends its sympathy to Robert and Karine Foulkes and their friends and family.

Thank you for providing the following recommendation from the Coroner's Report for the attention of DTP:

- (i) *That the Victorian Government consider amending the Road Safety Road Rules 2017 to include a specific authorisation within rule 267 for the use of an alternative restraint in circumstances where, by virtue of a disability or medical condition, a child is exempted from wearing a seatbelt or being placed in an approved child restraint or booster seat.*

DTP does not consider it is necessary to make any changes to the Road Safety Road Rules 2017 (the Road Rules) because an appropriate exemption process is already provided for within the Road Rules. The current exemption process enables the use of appropriate alternative restraints when there is a medical need.

Rule 267(3) of the Road Rules provides for an exemption to Road Rules relating to the wearing of seatbelts, or being restrained or placed in an approved child restraint or approved booster seat. If a registered medical practitioner issues a certificate stating that, because of a disability or medical condition, it is impracticable, undesirable or inexpedient the person wear a seatbelt or be restrained in an approved child restraint or approved booster seat, then the person or child is exempt from seatbelt requirements including from the requirements of Rule 266A, which relates to the appropriate securing of passengers under 16 years old.

This means the person is not required to use an approved child restraint (ie child restraints that comply with AS/NZS 1754:2013) and may use alternative child restraints.

Alternatively, the subrule has provision for the imposition of conditions for the exemption, as the person is required to comply with any conditions stated in the certificate. These conditions may require the use of alternative restraints as specified by the registered medical practitioner.

The Coroner's Report states the following in the second sentence of paragraph 33:

In circumstances where the authorisation does not then extend to the use of an alternative restraint, the requirements outlined above for Standard 4370 continue to apply to any special purpose child restraint, such as a lie-flat restraint.

As outlined above, the registered medical practitioner does not authorise the use of an alternative restraint, they provide an exemption to the wearing of a seatbelt or age-appropriate child restraint. The Australian Standard 4370 is not an approved child restraint under the Road Rules because the purpose of these standards is to set specifications for restraints for children with disabilities or medical conditions in motor vehicles which are used in special circumstances. Under the current framework, it is not necessary to prescribe this particular standard under the Road Rules.

Accordingly, DTP considers the Road Rules already provide for the intent of the Coroner's recommendation, which is to permit the use of alternative restraints in circumstances where, by virtue of a disability or medical condition, a child is required to use an alternative to the currently approved restraints.

I will take the opportunity to note other work to improve the safety of children with disabilities or medical conditions. Through our membership in Austroads, an association of Australasian road transport and traffic agencies, DTP has contributed to further research into the investigation of specialty harnesses and vests used by children with disabilities and medical conditions in motor vehicles. The project is aimed to assist with the development of guidance and standards for their adoption and use in motor vehicles in Australia and New Zealand.

Thank you for providing an opportunity to comment. This is an important matter and the Department of Transport and Planning is committed to ensuring the safety of all road users. If your office wishes to discuss the content of this letter or if you require and further information, please do not hesitate to contact Ben Koszalka, Director of Legislative and Regulatory Reform, [REDACTED]

Yours sincerely



Paul Younis
Secretary

Date: 06 November 2024