

This page and the subsequent 8 pages have been redacted on the basis that they are exempt from release.

Appendix A: Legislative Instrument

COMPETITION AND CONSUMER ACT 2010

Consumer Protection Notice No. 3 of 2014

SAFETY STANDARD: CHILD RESTRAINT SYSTEMS FOR USE IN MOTOR VEHICLES

I, the Hon. Bruce Billson MP, Minister for Small Business, pursuant to subsection 105(1) of the Australian Consumer Law (ACL), being Schedule 2 to the *Competition and Consumer Act 2010*, hereby:

- (a) **REVOKE** the Consumer Product Safety Standard declared under section 105(1) of the ACL by Consumer Protection Notice No. 21 of 2011;
- (b) **DECLARE** that, in respect of consumer goods of a kind specified in Division 1 of the Schedule to this Notice, each version of the standard approved by Standards Australia specified in Division 2 of the Schedule, as varied by Division 3 of the Schedule, is an alternative safety standard for the purposes of section 106 of the ACL

THE SCHEDULE

Division 1: Particulars of the consumer goods

The following consumer goods are specified:

- (1) Child restraints for use in motor vehicles, being devices to reduce the risk of bodily injury to a child passenger in the event of a motor vehicle impact.
- (2) Components:
 - (a) to restrain a child in a child restraint;
 - (b) to anchor a child restraint to a motor vehicle; and
 - (c) to restrain a vehicle seat.
- (3) Booster seats for use in motor vehicles, being devices:
 - (a) for raising a child's position in a motor vehicle; and
 - (b) for adapting an adult seat belt for use as a child restraint; and
 - (c) having a back above the seating plane.
- (4) Booster cushions for use in motor vehicles, being devices:
 - (a) for raising a child's position in a motor vehicle; and
 - (b) for adapting an adult seat belt for use as a child restraint; and
 - (c) having no back above the seating plane.

Note: This safety standard does NOT apply to motor vehicle child restraints designed for children with a disability or to items that are an integrated feature of a motor vehicle.

Division 2: The Declared Standard

Australian/New Zealand Standard AS/NZS 1754:2013, *Child restraint systems for use in motor vehicles*, approved by Standards Australia and published on 7 June 2013;

or

Australian/New Zealand Standard AS/NZS 1754:2010, *Child restraint systems for use in motor vehicles*, published 24 February 2010 as amended by, and incorporating, all amendments approved and published by Standards Australia prior to the date of this instrument;

or

Australian/New Zealand Standard AS/NZS 1754:2004, *Child restraint systems for use in motor vehicles*, published 8 November 2004 as amended by, and incorporating, all amendments approved and published by Standards Australia prior to the date of this instrument.

Division 3: Variations

Australian/New Zealand Standard AS/NZS 1754:2013 is varied by:

- (1) Deleting the text "passenger cars and their derivatives," and replacing with "motor vehicles," in the first sentence of clause 1.1;
- (2) Deleting the second sentence of clause 1.1;
- (3) Deleting clause 1.6;
- (4) Deleting clauses 2.3; 2.4; and 2.5;
- (5) Deleting clauses 3.13; 5.2.2(b); and 6.3(h);
- (6) Deleting clauses 3.14; 4.6; 5.8; 6.3(r); 6.4.3(v); 6.4.3(oo); 6.6(n)(E); and 6.6(x);
- (7) Deleting the following texts in Table 5.1:
 - (a) 'For aircraft testing TNO P¼';
 - (b) 'For aircraft testing TNO P1½';
 - (c) 'For aircraft testing TNO P3';
 - (d) 'For aircraft testing TNO P6';
- (8) Deleting Figures 3.17; and 6.5;
- (9) Deleting the second paragraph of clause 5.1; and
- (10) Deleting Appendix F.

Australian/New Zealand Standard AS/NZS 1754:2010 (as amended) is varied by:

- (1) Deleting the text "passenger cars and their derivatives," and replacing with "motor vehicles," in the first sentence of clause 1.1;
- (2) Deleting the second sentence of clause 1.1;
- (3) Deleting clauses 2.3; 2.4; and 2.5; and
- (4) Deleting clauses 3.12; 5.2.2(b); and 6.3(h).

Australian/New Zealand Standard AS/NZS 1754:2004 (as amended) is varied by:

- (1) Deleting the text "passenger cars and their derivatives," and replacing with "motor vehicles," in the first sentence of clause 1.1;
- (2) Deleting the second sentence of clause 1.1;
- (3) Deleting clauses 2.4; 2.5; and 2.6; and
- (4) Deleting clauses 3.12; 5.2.2(b); and 6.3(h).

Dated this _____ day of _____ 2014.

Appendix B: Explanatory Statement

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Small Business, the Hon. Bruce Billson MP

Competition and Consumer Act 2010

Consumer Protection Notice No. 3 of 2014

Safety standard: Child Restraint Systems for use in motor vehicles.

1. Overview:

This Regulatory Instrument provides an updated safety standard for child restraints for use in motor vehicles.

The safety standard ensures that child restraints supplied in the Australian market have key safety features considered appropriate to reduce the risk of injury to a child involved in a motor vehicle accident. The safety standard adopts requirements in the standard approved by Standards Australia, AS/NZS 1754 *Child restraint systems for use in motor vehicles* which was last revised in 2013.

2. Background:

Legislative Power

The *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* together with the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*, amended the *Trade Practices Act 1974* (TPA) to implement a new national consumer law regime known as the Australian Consumer Law (ACL). The TPA was renamed the *Competition and Consumer Act 2010* (CCA) on 1 January 2011. The ACL forms Schedule 2 to the CCA.

Subsection 105(1) of the ACL provides that the Commonwealth Minister may, by written notice published on the internet, declare that a standard prepared by, or approved by, Standards Australia, with variations specified in the notice, is a safety standard for consumer goods of a kind specified in the instrument.

Subsection 106(1) provides that a person must not, in trade or commerce, supply consumer goods of a particular kind if a safety standard for consumer goods of that kind is in force and those goods do not comply with the standard.

Safety requirements for the supply of child restraints are currently contained in *Competition and Consumer Act 2010* - Consumer Protection Notice No. 21 of 2011 - Safety standard: Child restraint systems for use in motor vehicles. The safety standard is a legislative instrument and is registered on the Federal Register of Legislative Instruments (FRLI)

Sunset Provisions

This safety standard is exempt from sunset provisions. Schedule 3 of the *Legislative Instruments Amendment (Sunsetting Exemptions) Regulation 2013* (SLIO No 212 of 2013) lists as exempt instruments made under section 104 or 105 (safety standards) of Schedule 2 (The Australian Consumer Law) to the *Competition and Consumer Act 2010*, including prescribed consumer product safety standards made under section 65C of the *Trade Practices*

Act 1974 that were in force immediately before the commencement of item 4 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*.

As a matter of good regulatory practice, the ACCC regularly reviews product safety standards to ensure they remain effective, efficient and appropriate and remain the best available solution, in the public interest, to an identified safety hazard.

3. Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

This Legislative Instrument is a safety standard concerning the supply of child restraints for use in motor vehicles.

Human Rights Implications

The Legislative Instrument engages, amongst others, the right to health and the rights of the child.

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Convention on the Rights of the Child recognises the right of the child to the enjoyment of the highest attainable standard of health.

The Legislative Instrument promotes these rights by requiring all child restraints to conform to the construction, design, testing and labelling requirements set out in the instrument and prohibiting from supply those restraints that do not meet these requirements.

Conclusion

The Legislative Instrument does not limit and is compatible with human rights because it advances the protection of human rights by requiring a supplier to supply goods which comply with current safety standards, thereby preventing harm or injury to people, including children.

4. Stakeholder consultation:

Following initial discussion with industry and advocacy groups, a Consultation Paper was released in November 2013 outlining proposed amendments to the standard, and was circulated to interested parties, including manufacturers, suppliers, State and Territory regulators, and consumer groups. Eighteen submissions were received, including from suppliers, manufacturers, laboratories, state and territory road authorities, industry associations, safety researchers, and child safety advocates.

On the basis of the comments received and further discussion and research by the ACCC, another Consultation Paper seeking stakeholder views and further information was released in June 2014. This consultation concerned a specific proposal to change the mechanism by which the voluntary standard, AS/NZS 1754, is supported. The proposal was to move from use of a specific safety standard to use of the general provisions of the ACL. Nineteen

submissions were received by the end of July 2014. Submissions from stakeholders were overwhelmingly in favour of retention of the safety standard.

Taken together, consultation with interested parties including manufacturers/suppliers of child restraints, State and Territory road authorities, State and Territory fair trading/consumer affairs agencies, consumer groups and child safety specialists strongly supports the continuing regulation of the supply of this product based on revision/update of the existing mandatory standard.

5. The requirements of the safety standard:

This instrument declares the 2004, 2010 and 2013 versions of the Australian / New Zealand standard for child restraint systems for use in motor vehicles AS/NZS 1754, as varied, to be alternatives for complying with the safety standard for the purposes of section 106. The purpose of the safety standard is to ensure that child restraints supplied on the Australian market have key safety features that reduce the associated risks of injury to a child involved in a motor vehicle accident. All versions of the Australian / New Zealand standard specifies minimum design, construction and performance requirements for child restraints in order to ensure a high level of protection for children placed in them. The declaration of the three most recent versions of AS/NZS 1754 as alternative standards is to ensure that hire services and second hand suppliers do not face an unreasonable burden of compliance.

Requirements of AS/NZS 1754 which are mandated in the safety standard relate to:

- Materials;
- Design and construction;
- Performance;
- Testing;
- Informative labelling, instructions, marking and packaging; and
- Appendices which relate to clothing for test dummies; spacers for attachment to test dummies; instructions to be supplied for installation of the upper anchorage fittings; recommended dummy types and an explanation of the new shoulder designation system for choosing an appropriate child restraint.

AS/NZS 1754 has been varied to simplify the language used in the scope of the mandatory safety standard, as well as to remove clauses which are not fundamental to the safety of child restraints and, as such, are not within the scope of a mandatory safety standard. The variations to each revision of AS/NZS are described by Table 1 below.

Table 1: Summary of variations and deletions

Clause in AS/NZS 1754:			Effect of variation:
2013	2010	2004	
1.1	1.1	1.1	Replaces wording to simplify the scope of mandatory safety standard.
1.1	1.1	1.1	Deletes a sentence to simplify the scope of mandatory safety standard.
2.3; 2.4 and 2.5	2.4; 2.5 and 2.6	2.4; 2.5 and 2.6	Deletion of clauses pertaining to flammability; toxicity and plastics stabilization, respectively, as these have been assessed as not being critical safety issues with regards to safe retention of a child occupant in the event of a motor vehicle accident.
3.13; 5.2.2(b) and 6.3(h)	3.12; 5.2.2(b) and 6.3(h)	3.12; 5.2.2(b) and 6.3(h)	Deletion of clauses pertaining to child restraints designed for children with disabilities, as these are not within the scope of the mandatory safety standard.
1.6, Appendix F			Deletes clauses relating to requirements for regular testing and demonstration so as to give suppliers flexibility as to how they demonstrate compliance.
3.14;4.6;5.8;6.3(r);6.4.3(oo); 6.6(n)(E) and 6.6(x). References to aircraft in Table 5.1. Figures 3.17 and 6.5			Deletes clauses and references to aircraft as these are not in the scope of the mandatory safety standard.
2 nd paragraph of 5.1			Deletes clause relating to use of a rebound sled so as not to limit accreditation of laboratories.

**Appendix C: November 2013 Consultation Paper: Review of the Consumer Product
Safety Standard for child restraint systems for use in motor vehicles**



Australian Competition & Consumer Commission

DISCUSSION PAPER

Review of the Consumer Product Safety Standard for child restraint systems for use in motor vehicles

This discussion paper details proposed changes to the product safety standard for child restraint systems for use in motor vehicles

21 November 2013

Closing date for submissions 16 January 2014

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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Purpose

The purpose of this discussion paper is to:

- inform key stakeholders of the reasons for proposed changes to the mandatory standard for child restraint systems for use in motor vehicles (**the Standard**),
- consult with key stakeholders on these changes; and
- obtain any additional information from stakeholders to help inform the revision of the Standard.

The ACCC will consider feedback received via this consultation process when forming its recommendation to the Minister. If the comments received result in substantial changes to the options outlined in this paper, a second round consultation (or potentially a Regulation Impact Statement) may be required.

Summary

This paper reviews the Standard, levels of compliance and relevant injury data. Based on the outcome of this review, it proposes that child restraint systems for use in motor vehicles (**child restraints**) continue to be regulated. The ACCC's current view is that ongoing regulation of child restraints remains reasonably necessary to prevent or reduce the risk of injury to any person.

The paper does not support maintaining the Standard without change. It proposes that amendment be made to reference the most recent revision of the relevant voluntary standard, Australian/New Zealand Standard AS/NZS 1754:2013 *Child Restraints for Use in Motor Vehicles (AS/NZS 1754:2013)*, with some variations.

It also proposes that the revised Standard continues to allow supply of child restraints which comply with the two previous iterations of the voluntary standard (as amended), AS/NZS 1754:2010 and AS/NZS 1754:2004. Restraints compliant with AS/NZS 1754:2000 (as amended) would no longer be allowed to be supplied.

Changes to the Standard, based on the most recent iteration of the voluntary standard, include the introduction of:

- requirements for ISOFIX compatible child restraints,
- new type designation for rear facing seats to allow children to stay rear facing for longer,
- requirements for certain types of child restraints to cater for older or younger children,
- new requirements for dynamic testing, and
- warning label requirements for Type A child restraints about wrapping an infant in a blanket or swaddle;

with variations or exclusions related to:

- child restraints designed for children with disabilities,
- child restraints suitable for use on aircraft,
- flammability, toxicity and stabilisation,
- the rebound sled used for full type testing, and
- batch testing.

The option of removing all mandatory regulation of child restraints was considered but is not recommended as the Standard specifies minimum design, construction and performance requirements to ensure that child restraints supplied in the Australian market have key safety features that reduce the risks of injury or death to a child in the event of a motor vehicle accident.

if the Minister agrees to amend the Standard, a lead time of 12 months to enable suppliers to make any necessary changes would be considered appropriate.

Consultation

Stakeholders are invited to make submissions on the proposal set out in this paper—or to make alternative submissions on relevant issues not covered in this paper. Submissions are invited from stakeholders including suppliers of child restraints and other interested parties.

The closing date for stakeholders to provide feedback is 16 January 2014.

You are encouraged to provide feedback on a draft Consumer Protection Notice at **Appendix A** at page 15 which details the proposed changes.

We are also seeking in particular:

- feedback on any additional compliance costs or savings associated with the introduction of the revised Standard, for example, due to no longer allowing the supply of child restraints compliant with the 2000 version of the AS/NZS 1754 (as amended)
- any evidence which demonstrates that child restraints that have passed a non-rebound sled but did not pass the re-bound sled, are or are likely to be unsafe
- recent nationwide and fatality injury data.

We welcome any additional feedback you may wish to provide.

You are encouraged to respond by email to:

Email: productsafety.regulation@acc.gov.au

Subject: Child restraint systems for use in motor vehicles review

Alternatively you may mail your response to:

Director
Regulated Products and Compliance
Product Safety Branch
ACCC
GPO Box 520
Melbourne VIC 3001

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The ACCC may be compelled by law to disclose submissions (for example under subpoena or following a request under the *Freedom of Information Act 1982*). For more information see the ACCC-AER Information Policy available via www.accc.gov.au

Background: The Australian product safety system

Section 104 of the ACL allows the Commonwealth Minister to make a safety standard for consumer goods which may consist of such requirements as are 'reasonably necessary to prevent or reduce the risk of injury to any person'. Safety standards made under the ACL are co-operatively enforced by the ACCC and state and territory fair trading agencies.

Section 106 of the ACL provides that a person must not in trade or commerce, supply, offer for supply or manufacture for supply, consumer goods of a particular kind if those goods do not comply with a safety standard currently in force for those goods.

The term 'supply' in relation to consumer goods (like child restraints) means supply by way of sale, offer for sale, exchange, lease, hire or hire-purchase.

Background: Regulation of child restraints

The national mandatory consumer product safety standard for child restraints was originally introduced in Australia in 1978 and was last revised in May 2011. The legislative instrument enabling the Standard is Consumer Protection Notice No. 21 - *Safety Standard: Child Restraint Systems for Use in Motor Vehicles*. The purpose of the Standard is to ensure that child restraints supplied on the Australian market have key safety features that reduce the associated risks of injury to/death of a child while travelling in a motor vehicle.

The mandatory safety standard for child restraints regulates the supply of child restraints. The use of child restraints is regulated via state/territory road traffic authority user requirements. Together, they ensure that safe product is available to, and used by, Australian consumers.

The current regulation

The Standard incorporates, with variations, the 2000, 2004 and 2010 versions of the Australian/New Zealand Standards - AS/NZS 1754. An updated version of the AS/NZS 1754 was published by Standards Australia on 7 June 2013 and this is not yet incorporated into the Standard.

The Standard's technical requirements are drawn from the AS/NZS 1754, including:¹

- A unique design requirement compared to International Standards – the top tether strap - as part of the vehicle/child restraint interface. The overriding benefit of a top tether is its influence on reducing child occupant head excursion. Protecting the head from contact with the vehicle interior is the highest priority of any child occupant protection system.
- Specifications for the length of the top tether when adjusted to its shortest length;
- Specifications for the location of mounting points for top tether straps in cars (to assist greater accessibility);
- Single point adjustment for the harness;
- Double crotch straps in forward facing restraints (i.e. a mandatory 6 point harness);
- For crash sled testing, a specially developed infant dummy, much more flexible and hence more prone to ejection than overseas infant dummies;
- A test for ease of adjustment;
- A requirement that any cover from a child restraint must be removable either without having to remove the harness or by having a harness arrangement which allows the shoulder strap to disengage from hardware located in either of two positions to the rear of the occupant;
- A comprehensive dynamic test method that includes frontal, side, rear and inverted simulated impacts;
- Permanent and legible marking, amongst other details, with the manufacturer's name, trademark, or other means of identification; and
- General information and instructions for installation, use and maintenance are to be provided in a booklet or sheet.

Child restraints

A child car restraint is a device used together with an adult seatbelt or ISOFIX compatible lower attachment connectors to restrain a child passenger and reduce the risk of their bodily injury or death in the event of a car accident.

There are six main different types of child restraints currently supplied in Australia.² These are:

- **Type A:** Rearward-facing or transversely installed restraint with a harness or other means of holding the child back
- **Type B:** Forward-facing chair with a harness
- **Type C:** Forward-facing harness to be used with a booster seat and/or without a chair
- **Type D:** Rearward-facing chair with harness
- **Type E:** A booster seat used with a lap-sash seat belt, or a Type C child restraint and a seat belt
- **Type F:** A booster seat used with a lap-sash seat belt, suitable for children approximately 4 to 8 years old whose height is less than 128 cm, or a Type C child restraint and a seat belt
- **Type G:** A booster seat used with a lap-sash seat belt, suitable for children older and taller than prescribed for Type F child restraints, or a Type C child restraint and a seat belt

¹ See also RACV, 'Safety Innovations for Australian Child Restraints' (2004) Research Report 04/04, p2.

² Summary of the different types of child restraints provided in the AS/NZS 1754:2013. Please note that there are more child restraint types in the 2013 version than the 2004 and 2010 versions of the AS/NZS 1754.

- **Type H:** A converter used with a booster seat and/or seatbelt without a booster seat, depending on the age of the child.

Combination type: Child restraints can also be a combination of the above types. For example, a Type A/B converter seat.

Child restraints retail at a range of prices. The cheapest restraints cost \$50. High end convertible restraints can reach prices of \$650. Based on an estimated average price of \$250 for a child restraint, the retail value of child restraints sold per year is estimated at around \$87.5 million.

Market

It is estimated that more than 250,000 child restraints are sold annually in Australia.³ The most popular product types are convertible restraints designed to be used for a longer period of the child's life, for examples, convertible restraints for newborns to 4 years and convertible booster seats that cater for 12 months to 8 years.

The child restraint market is highly concentrated and dominated by a small number of vertically integrated Australian suppliers (for examples, IGC Dorel Pty Ltd, InfaSecure Pty Ltd and Britax Childcare Pty Ltd) who manufacture, import and wholesale the majority of child restraints sold in Australia.

Approximately 50 per cent of the products in the Australian market are manufactured locally and the balance is made up by imported products. Local manufacturers are facing strong competition from importers of Chinese manufactured products.

Child restraints are sold in a range of retail outlets in Australia, including specialist children's and baby goods stores, department stores and automotive stores. The specialist children's and baby stores appear to be the largest market sector as it also has a group of suppliers who trade exclusively online. These online traders include My Baby Warehouse, BabyZoneDirect, BubsBabyShops, Baby Shop Direct, Tiny Tots and Baby Online Direct.

Injury data

A study published in the Medical Journal of Australia (MJA) in June 2007 showed that:⁴

- In Australia in 2005, 72 child passengers under the age of 16 were killed in motor vehicle accidents, accounting for about two-thirds of all road user deaths in this age group.
- About a thousand Australian children are seriously injured in motor vehicle accidents each year, despite 92% using seatbelts and child restraints.
- Car accidents are the most common cause of injury and deaths for Australian children aged 1-14 years and account for about 40% of all injury-related deaths.
- Premature graduation of children to adult seatbelts, misuse of seatbelts and use of lap-only belts increase the risk of injury or death.
- Australian parents believe child restraint installation is easy, however research indicates that more than 20% of restraints are fitted incorrectly (e.g. top tether not connected, seatbelt

³ This estimate is based on a figure cited in the 2007 ACCC 'Regulation Impact Statement' for 'Consumer Product Safety Standard - Child Restraint Systems for Use in Motor Vehicles' (page 6). The ACCC requests for current sales figures.

⁴ Katie N Reeve, Yvonne A Zuryinski, Elizabeth J Elliot and Lynne Bilston, 'Seatbelts and the law: how well do we protect Australian children?' 186(12) *Medical Journal of Australia* 635, 635-638.

incorrectly threaded or not buckled, anchorage point used incorrectly). About two-thirds of parents consider using licensed restraint-fitting stations.

Although the use of correctly fitted child restraints does not reduce the risk of motor vehicle accidents occurring, there is a significant body of evidence suggesting that their use does reduce the risk of injury or death when an accident occurs.

Compliance

ACCC marketplace surveillance results in 2009 in 2012 indicated a high compliance level with the Standard. In 2009 there were no breaches identified amongst the 74 product lines surveyed across the ACT and NSW. In 2012, all of the 1,827 product lines inspected from 325 outlets across the ACT, NSW, QLD, SA and WA were considered compliant.

Since 1986 there have been 18 recalls of child restraints for a range of faults and significant non-compliances with the Standard. For example, in November 2012, three large suppliers of child restraints conducted a voluntary recall of 60,000 child restraints due to a faulty anchor kit supplied by Hemco Industries. Of the 18 recalls, two were instigated by the ACCC for the supply of child restraints seats without upper tether straps.⁵

Hazards addressed by the current regulation

The primary hazard addressed by the current regulation is the risk of serious injury or death of children in a motor vehicle accidents where their child restraint does not have key safety features considered reasonably necessary. Standard motor vehicle seat belts are not effective enough for young children. Australian road laws recognise (and complement the mandatory standard covering the supply of child restraints) this by requiring the use of effective child restraints.⁶

The Australian/New Zealand Standard for child restraints, AS/NZS 1754 *Child restraint systems for use in motor vehicles* is widely recognised internationally as one of the most stringent child restraint standards in the world⁷ with children in Australian Standards approved child restraints surviving motor vehicle crashes previously thought to be unsurvivable by overseas experts.⁸

Is continued regulatory intervention justified?

Continued regulatory intervention appears justified for the following reasons:

Reduce the risk of injury and death

- It is difficult to obtain injury data to show whether the motor vehicle child restraints, by themselves, have been effective in preventing infant injuries and death or that their improper selection and/or use has contributed to injury/death. However, studies cited in a MJA article indicated that child restraints reduce the risk of injury and death in a car crash by

⁵ One recall in 2008, see PRA 2008/10153 *Xport Investments Baby Shield Child Restraint System* via the ACCC Product Safety Recalls Australia website www.recalls.gov.au. Another recall in 2009, see PRA 2009/10940 *WORWO Baby Car Seat*.

⁶ Australian Competition and Consumer Commission (ACCC), 'Regulation Impact Statement' for 'Consumer Product Safety Standard - Child Restraint Systems for Use in Motor Vehicles' (March 2007) p3.

⁷ RACV, 'Safety Innovations for Australian Child Restraints' (2004) Research Report 04/04, p22.

⁸ ACCC, 'Regulation Impact Statement' for 'Consumer Product Safety Standard - Child Restraint Systems for Use in Motor Vehicles' (March 2007) p4; Katie N Reeve, Yvonne A Zuryinski, Elizabeth J Elliot and Lynne Bilston, 'Seatbelts and the law: how well do we protect Australian children?' 186(12) *Medical Journal of Australia* 635, 635.

minimising contact with the vehicle's interior, reducing impact forces and spreading forces onto less vulnerable parts of the body.⁹

- When correctly selected, installed and used, compliant child restraints should provide protection for a child well beyond that of a standard seat belt.¹⁰ According to Kidsafe Australia, research has shown that approved and properly fitted child restraints may reduce the risk of death or serious injury in road crashes by up to 70%.¹¹

Inefficacy of self-regulation

- Without continued regulatory intervention, suppliers and potential entrants would be free to market any standard of restraint, without due consideration of key safety factors. Revoking the Standard was considered but is not recommended as the Standard specifies minimum design, construction and performance requirements to ensure that child restraints supplied in the Australian market have key safety features that reduce the risks of injury or death to a child in the event of a motor vehicle accident. The ACCC does not believe that the market would 'self-regulate' to ensure these key safety features were present in the absence of a mandatory requirement to do so.
- Remedial action (such as product recalls) sought by the ACCC from suppliers for significant breaches of the Standard indicates that continued regulatory presence is necessary to ensure adequate levels of product safety in the market.

Consumers cannot assess the product's level of protection

- Due to the highly technical dynamic and other performance safety requirements, child restraint buyers could not reasonably be expected to assess the safety or otherwise of a restraint.

Proposed changes to the mandatory standard

The current proposal is for AS/NZS 1754:2013 to be adopted as mandatory in its entirety—with five main variations which are outlined on pages 11-13 of this consultation paper. Adopting these changes will reflect industry and testing developments which have occurred since the current Standard was made in May 2011.

AS/NZS 1754:2013 introduced, amongst other things, the following new elements to the voluntary standard:

- An ISOFIX compatible child restraint allows the seat to clip into two rigid or flexible ISOFIX lower anchorage points at the back car seat. An ISOFIX system aims to reduce the incidence of misuse and to improve the overall level protection provided by the child restraint systems in crashes.

At present, ISOFIX child restraints are not legally able to be supplied in Australia. The introduction of this change, allowing ISOFIX restraints, will provide consumers a greater choice of child car seats.

⁹ Katie N Reeve, Yvonne A Zuryinski, Elizabeth J Elliot and Lynne Bilston, 'Seatbelts and the law: how well do we protect Australian children?' 186(12) *Medical Journal of Australia* 635, 635-638.

¹⁰ ACCC, 'Regulation Impact Statement' for 'Consumer Product Safety Standard - Child Restraint Systems for Use in Motor Vehicles' (March 2007) p6.

¹¹ Kidsafe, 'A Parents Guide to Kidsafe Roads' (2011) 4th edn p15, accessed via <http://www.kidsafe.com.au/A%20Parents%20Guide%20to%20Kidsafe%20Roads%20FINAL%20WA.pdf> at 9 May 2013.

As it may be many years before all vehicles are fitted with ISOFIX lower anchorage points, the revised AS/NZS 1754 requires that ISOFIX compatible child restraints must also be capable of being installed into vehicles using just the car's seatbelt and used with an upper tether strap (consistent with the requirements of the 2004 or 2010 version of the AS/NZS 1754). Put another way, consumers will be able to choose to use an ISOFIX compatible child restraint as an ISOFIX system or an upper tether strap system.

- The new Type A4 child restraint allows children stay rear facing for longer.
- Prior to the new revision, the inbuilt harnesses requirements only catered for children approximately 6 months to approximately 4 years old. The new revision requirements cater for older children; to approximately 8 years old.
- A new test method has been included that defines a single method of testing energy attenuation of side structure of child restraints
- Test requirements for Type A restraints have been revised to allow the optional designation of the child restraint to be suitable for low birth weight infants.
- Provision of instruction booklet with the child restraint.

After a Brisbane Coronial Inquiry into the death of an eight week old baby in a road accident, who was incorrectly restrained in a baby capsule and ejected from the vehicle, the following new requirements were introduced to the voluntary standard:

- the cover of the instruction booklet or sheet shall state that this booklet/sheet must be kept in the place provided (in the storage location or pocket which is permanently fixed on the restraint or cover see Clause 6.4.1) on the child restraint, or for Types C1 and C2 child harnesses and Type H must be in the package with the restraint,
- the instruction booklet must include advice about the potential for an infant to be ejected and killed if the baby is wrapped in a blanket or swaddled (see Clause 6.4.3 (ss)), and
- for Type A restraints, a warning to not wrap an infant in a blanket or swaddle (see Table 6.2 in the voluntary standard).

Proposed variations from AS/NZS 1754:2013

As previously mentioned, the ACCC is proposing that the AS/NZS 1754:2013 be adopted as mandatory in its entirety—with five main variations:

1. Child restraints designed for children with disabilities

Clause 3.13 provides that child restraints designed for children with disabilities requiring special needs should meet the 'intent' of the Standard. Similar wording has appeared in the 2004 and 2010 versions of the AS/NZS 1754 (upon which the current Standard is based). According to the 2007 Regulatory Impact Statement¹² this clause had created uncertainty amongst suppliers as to whether their product would meet this requirement and caused their general reluctance to supply such restraints due to concern that their product would be assessed as non-compliant with the Standard.

¹² ACCC, 'Regulation Impact Statement' for 'Consumer Product Safety Standard - Child Restraint Systems for Use in Motor Vehicles' (March 2007) p8.

It is proposed that the requirement for restraints designed specifically for children with disabilities be exempted from the new Standard to avoid creating supplier confusion and potential compliance/enforcement difficulties.

2. Child restraints suitable for use on aircraft

The AS/NZS 1754:2013 introduces new requirements for manufacturers who opt to design and test the suitability of their child restraints for use on aircrafts.

However it is considered inappropriate to incorporate the requirements for restraints suitable for use on aircraft in the new Standard given the intent of the Standard is to reduce the risk of injury or death in motor vehicles.

It is proposed to exclude this requirement from the Standard.

3. Flammability, Toxicity and Plastics Stabilisation

It is proposed that the requirements for child restraints in relation to flammability, toxicity and plastics stabilisation be excluded from the new Standard unless the ACCC receives evidence of serious injuries or death attributed to any of these factors during this consultation process.

4. Rebound sled for full type testing

Clause 5.1 requires, amongst other things, that:

For type testing of child restraints for certification purposes, the dynamic test rig shall operate by using a rebound method to achieve the desired deceleration where the forward velocity change is no greater than 75% of the total velocity change.

This requirement was introduced due to a concern about potential inconsistency of test results if different types of test sleds, namely non-rebound and rebound sleds, were used. The ACCC is aware of claims that there are known incidents where a child restraint has passed a non-rebound sled but failed rebound sled testing.

The ACCC requests any evidence which demonstrates that child restraints that have passed a non-rebound sled but did not pass the re-bound sled, are or are likely to be unsafe.

Unless this evidence is provided to the ACCC, it is proposed that the requirement for a rebound sled be used for full type testing be excluded from the new Standard.

This will prevent the situation where laboratories equipped with a non-rebound sled are potentially excluded from conducting full type tests and therefore unable to attain accreditation to test to the full requirements of AS/NZS 1754:2013.

5. Batch testing

Clause 1.6 requires that manufacturers must regularly sample and test child restraints in accordance with a prescribed method to demonstrate ongoing product compliance with the AS/NZS 1754:2013.

It is proposed, however, that this requirement is exempted from the new Standard to reduce the regulatory burden by giving suppliers flexibility as to how they demonstrate product compliance.

It should be noted that while products supplied must comply with mandatory safety standards, this does not mean suppliers are legally required to test for compliance with such standards.¹³ However, being able to produce a test report showing compliance with a mandatory standard is considered sound business practice and an important element of any prudent supplier's compliance program.¹⁴

Earlier versions of AS/NZS 1754

The current Standard allows supply of child restraints which comply with the 2000, 2004 or 2010 versions of AS/NZS 1754 (as amended). This is because of the recognised long life of child restraints and the continued sale and hire of older model child restraints which were made to meet the requirements of earlier versions of AS/NZS 1754.

The new Standard will continue to recognise child restraints which meet the requirements of either the 2004 or 2010 versions of the AS/NZS 1754 (as amended) – in addition to the 2013 version, with the amendments outlined above.

Based on this, compliance with the 2000 version of AS/NZS 1754 would no longer meet the requirements of the Standard and these child restraints would not be able to be legally sold in Australia. While AS/NZS 1754:2000 certified restraints may still generally be considered safe, the use of child restraints which are more than 10 years old and meet versions of AS/NZS 1754 published before 2004 is generally not recommended. The introduction of the new Standard will be accompanied by an enhanced consumer and supplier education campaign to help ensure that stakeholders are aware of any changes.

Booster cushions are not included in the 2010 or 2013 version of AS/NZS 1754. However they are included in the 2004 version – and so booster cushions compliant with this standard (as amended) will still be able to legally be supplied in Australia.

Time to commencement

A lead time of 12 months would ensure that older child restraint stock compliant with the 2000 version of AS/NZS 1754 could be run down. This is consistent with the lead in time provided to suppliers when the mandatory standard was last updated in 2011.

Anticipated impact on the market

The ACCC anticipates that these proposed changes to the Standard will generally be readily accommodated by industry and supported by consumers. Industry has, for some time, actively sought for ISOFIX compatible restraints to be included in the Standard so they could be legally sold in Australia.

Similarly, both individual consumers and consumer advocacy groups have contacted the ACCC with questions about when ISOFIX restraints will be legal to supply. Since the most recent voluntary standard was published, the ACCC has received an increased number of calls from suppliers and consumer groups regarding these changes and wanting to know when the mandatory standard would be updated so they could purchase an ISOFIX compatible restraint.

Combined with the desire to allow for product development and innovation where safety is maintained or improved, this is a key driver behind the ACCC's work to update the Standard.

¹³ ACCC, 'Product Safety – A Guide to testing' (May 2011) p7.

¹⁴ ACCC, 'Product Safety – A Guide to testing' (May 2011) p8.

The ACCC also expects little if any negative impact in suppliers as a result of these changes: survey results indicate that the majority of child restraints supplied in Australia already comply with either the 2004 or 2010 versions of the AS/NZS 1754.

Related product: Aftermarket accessories for child restraints

The current and proposed new mandatory standard for child restraints covers accessories which are supplied with¹⁵ the child restraint, but not accessories sold separately for use with child restraints.

A new voluntary standard covering accessories for child restraints sold separately was published on 8 May 2013: AS/NZS 8005:2013 *Accessories for child restraints for use in motor vehicles*. The objective of this voluntary standard is to "provide minimum requirements for the design, construction, performance and informative labelling for products sold separately as accessories for child restraints covered by AS/NZS 1754, *Child restraint systems for use in motor vehicle*."¹⁶

The ACCC is not currently planning on recommending to the Minister that these requirements be mandated.

Conclusion

This discussion paper proposes amendments to the Standard so that it references the most recent version of the relevant voluntary standard, AS/NZS 1754:2013, with variations or exclusions related to:

- child restraints designed for children with disabilities,
- child restraints suitable for use on aircraft,
- flammability, toxicity and stabilisation,
- the rebound sled used for full type testing, and
- batch testing.

The proposed changes are supported by both compliance and injury data reviewed by the ACCC.

The primary purposes of the proposed amendments are to update the Standard so that suppliers can utilise the latest Australian/New Zealand Standard, AS/NZS 1754:2013, and consumers can benefit from increased choice and the corresponding improvements in safety. The adoption of the 2004 and 2010 versions of the AS/NZS 1754 in the new Standard takes into account the 'long life' of child restraints and allows the continued sale and hire of older product models.

¹⁵ In contrast to the 2004 and 2010 versions of the AS/NZS 1754, the new AS/NZS 1754:2013 defines 'accessories fitted to or with the restraint at point of sale' as 'removable items'. See Clause 1.4.36.

¹⁶ See second paragraph of AS/NZS 8005:2013 *Accessories for child restraints for use in motor vehicles*, p2.

Appendix A: Draft Consumer Protection Notice XX of 2014

COMMONWEALTH OF AUSTRALIA

COMPETITION AND CONSUMER ACT 2010

Consumer Protection Notice No. XX of 2014

SAFETY STANDARD: CHILD RESTRAINT SYSTEMS FOR USE IN MOTOR VEHICLES

I, XXXXX XXXXXX, Minister for Small Business, pursuant to subsection 105(1) of Schedule 2 to the *Competition and Consumer Act 2010*, hereby:

- (a) **REVOKE** the Consumer Product Safety Standard declared under section 106 of Schedule 2 of the *Competition and Consumer Act 2010* by Consumer Protection Notice No. 21 of 2011;
- (b) **DECLARE** that, in respect of consumer goods of a kind specified in Division 1 of the Schedule to this Notice, the standards approved by Standards Australia specified in Division 2 of the Schedule, as varied by Division 3 of the Schedule, are safety standards for the purposes of section 106 of Schedule 2 to the *Competition and Consumer Act 2010*.

THE SCHEDULE

Division 1: Particulars of the consumer goods

The following consumer goods are specified:

- (1) Child restraints for use in motor vehicles, being devices to reduce the risk of bodily injury to a child passenger in the event of a motor vehicle impact.
- (2) Components:
 - (a) to restrain a child in a child restraint;
 - (b) to anchor a child restraint to a motor vehicle; and
 - (c) to restrain a vehicle seat.
- (3) Booster seats for use in motor vehicles, being devices:
 - (a) for raising a child's position in a motor vehicle; and
 - (b) for adapting an adult seat belt for use as a child restraint; and
 - (c) having a back above the seating plane.
- (4) Booster cushions for use in motor vehicles, being devices:
 - (a) for raising a child's position in a motor vehicle; and
 - (b) for adapting an adult seat belt for use as a child restraint; and
 - (c) having no back above the seating plane.

Note: This safety standard does NOT apply to motor vehicle child restraints designed for children with a disability or to items that are an integrated feature of a motor vehicle.

Division 2: The Australian/New Zealand Standards referenced by this regulation

Australian/New Zealand Standard AS/NZS 1754:2013, *Child restraint systems for use in motor vehicles*, approved by Standards Australia and published on 7 June 2013;

or

Australian/New Zealand Standard AS/NZS 1754:2010, *Child restraint systems for use in motor vehicles*, published 24 February 2010 as amended by, and incorporating, all amendments approved and published by Standards Australia prior to the date of this instrument;

or

Australian/New Zealand Standard AS/NZS 1754:2004, *Child restraint systems for use in motor vehicles*, published 8 November 2004 as amended by, and incorporating, all amendments approved and published by Standards Australia prior to the date of this instrument;

Division 3: Variations

Australian/New Zealand Standard AS/NZS 1754:2013 is varied by:

- (1) Deleting the text "passenger cars and their derivatives," and replacing with "motor vehicles," in the first sentence of clause 1.1;
- (2) Deleting the second sentence of clause 1.1;
- (3) Deleting clause 1.6;
- (4) Deleting clauses 2.3; 2.4; and 2.5;
- (5) Deleting clauses 3.13; 5.2.2(b); and 6.3(h);
- (6) Deleting clauses 3.14; 4.6; 5.8; 6.3(r); 6.4.3(o)(v); 6.4.3(oo); 6.6(n)(E); and 6.6(x);
- (7) Deleting the following texts in Table 5.1:
 - (a) 'For aircraft testing TNO P $\frac{3}{4}$ ';
 - (b) 'For aircraft testing TNO P1 $\frac{1}{2}$ ';
 - (c) 'For aircraft testing TNO P3';
 - (d) 'For aircraft testing TNO P6';
- (8) Deleting Figures 3.17; and 6.5;
- (9) Deleting the second paragraph of clause 5.1; and

- (10) Deleting Appendix F, Table F1, and Table F2.

Australian/New Zealand Standard AS/NZS 1754:2010 (as amended) is varied by:

- (1) Deleting the text "passenger cars and their derivatives," and replacing with "motor vehicles," in the first sentence of clause 1.1;
- (2) Deleting the second sentence of clause 1.1;
- (3) Deleting clauses 2.3; 2.4; and 2.5; and
- (4) Deleting clauses 3.12; 5.2.2(b); and 6.3(h).

Australian/New Zealand Standard AS/NZS 1754:2004 (as amended) is varied by:

- (1) Deleting the text "passenger cars and their derivatives," and replacing with "motor vehicles," in the first sentence of clause 1.1;
- (2) Deleting the second sentence of clause 1.1;
- (3) Deleting clauses 2.4; 2.5; and 2.6; and
- (4) Deleting clauses 3.12; 5.2.2(b); and 6.3(h).

Dated this XXnd day of [month] 2014.

XXXXX XXXXXX
Minister for Small Business

**Appendix D: July 2014 Consultation Paper: Review of the Consumer Product Safety
Standard for Child Restraints**



**Australian
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Review of the Consumer Product Safety Standard for Child Restraints

23 June 2014

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Disclaimer

The Australian Competition & Consumer Commission (ACCC) has developed this consultation paper to seek the views of key Australian stakeholders about the proposed changes to the mandatory standard for child restraints for use in motor vehicles (this includes Commonwealth, State/Territory government agencies, NGOs and industry stakeholders).

No final policy decisions have been made about the proposed changes.

The ACCC will consider all feedback provided in response to this consultation in developing its recommendation to the Commonwealth Minister who administers Part XI of the *Competition and Consumer Act 2010*.

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1. Introduction

Where a consumer product is potentially hazardous the Australian Government can choose whether to take action to remove or action to reduce the possibility that those goods pose a risk of injury to a person. This choice needs to be fully informed by analysis and consideration of the regulatory problem, including the development and assessment of all viable options. When market intervention is necessary, the best option available will offer an overall net benefit without undue compliance burdens.

The Commonwealth Minister who administers Part XI of the *Competition and Consumer Act 2010*¹ (the CCA) may impose requirements on the supply on consumer goods. This may include *making or declaring* safety standards². The Commonwealth Minister does not need to be satisfied of any particular criteria before making a safety standard. A safety standard may consist of such requirements as are reasonably necessary to prevent or reduce the risk of injury to any person. Where an Australian Standard exists that addresses potential risks of injury to a person the Commonwealth Minister may *declare* that Australian Standard³ (with or without variation) to be a safety standard for the CCA. Whether it is *declared* or *made*, the notice of a safety standard is a legislative instrument for the purposes of the Legislative Instrument Act 2003.

The ACCC conducts analysis of potential safety risks posed by some consumer products, develops management options through consultation⁴ and makes recommendations to the Commonwealth Minister. In doing so, the ACCC is cognisant of the Australian Government's wider regulation policy. This means that:

- recommendations must balance the interests and safety of consumers against compliance costs to business and the community; and
- principles-based or outcome based regulation needs to be considered, as it is more likely to accommodate changes to manufacturing, allow for innovation and reduce compliance costs.

Where a mandatory consumer product safety standard applies to a consumer good, suppliers must not supply or offer to supply the product if it does not comply. The Australian Consumer Law (the ACL) provides for significant penalties for a breach of a safety standard or permanent ban. The maximum penalty for breach of a safety standard or permanent ban is \$1.1 million for a corporation and \$220,000 for an individual.

2. Purpose

The purpose of this paper is to consult with stakeholders on a proposal to alter the mechanism by which the Australian government ensures that child restraints supplied in Australia for use in motor

¹ The Commonwealth Minister who administers Part XI of the *Competition and Consumer Act 2010* is referred to as the Commonwealth Minister throughout this paper.

² For more detailed explanation see Section 5

³ In the case of child restraints this Australian Standard is AS/NZS 1754 *Child restraint systems for use in motor vehicles*. It is referred to as AS/NZS 1754 throughout this paper.

⁴ In line with usual practice the ACCC released a Consultation Paper to facilitate the review of the safety standard for child restraint systems for use in a motor vehicle in November 2013 to seek public comment on proposed changes to the mandatory product safety standard. The paper can be viewed at <http://www.productsafety.gov.au/content/index.php/itemid/1004111/fromItemid/973889>

vehicles do not pose a risk of injury to a child travelling in a motor vehicle as a passenger and are legally able to be used, i.e. are fit for purpose.

This paper seeks views and relevant information from interested parties that will assist in assessing the proposal to alter the way in which the provisions of the CCA are used to meet the government's objectives relating to the safety and usefulness of child restraints. The current method is through use of a mandatory product safety standard (the **safety standard**) which references several versions of AS/NZS 1754 with some variations. It is proposed that in future the general provisions of the CCA be used to support AS/NZS 1754 and the existing regulations of the State and Territory road authorities.

Of particular interest in this consultation is any factual information which will assist in assessing the potential impacts and benefits of the proposal. Stakeholders should indicate their view of the change, their rationale and any evidence that supports their view.

The Office of Best Practice Regulation has advised the Australian Competition and Consumer Commission (ACCC) that a Regulation Impact Statement is not required. The consultation process outlined in this paper **may be the only opportunity for stakeholders to provide their input into the review process**. All interested parties are encouraged to make submissions on the options or other issues relevant to the review even if they agree with the preferred option set out below.

3. Background

The current safety standard

A safety standard is currently in place for child restraint systems for use in motor vehicles. It first came into effect on 7 November 1978 and was last amended 7 May 2011. The safety standard was first made under the provisions of the *Trade Practices Act 1974* (the TPA). The Australian Consumer Law (ACL), which is Schedule 2 to the CCA, took effect on 1 January 2011. Safety standards made under the TPA, such as the current safety standard for child restraints, continued in force as if they had been made under the ACL.

The safety standard is a legislative instrument and is registered on the Federal Register of Legislative Instruments (FRLI)⁵ as Consumer Protection Notice No. 21 of 2011- *Safety Standard: Child Restraint Systems for Use in Motor Vehicles*.

The purpose of the safety standard is to support a broader road safety objective of reducing injuries to children involved in motor vehicle accidents. It ensures that child restraints supplied on the Australian market have key safety features considered reasonably necessary to reduce the risk of injury to/death of a child while travelling in a motor vehicle.

A person must not, in trade or commerce, supply consumer goods of a particular kind if a safety standard for consumer goods of that kind is in force and those goods do not comply with the standard.

The safety standard declares that the 2000, 2004 and 2010 versions of AS/NZS 1754, with some variations is a safety standard for the purpose of s105 of the ACL. The safety standard has requirements, based on the requirements described in AS/NZS 1754 which relate to:

⁵ Available: <http://www.comlaw.gov.au/Details/F2011L00721>.

- materials;
- design and construction;
- performance;
- testing;
- instructions to be supplied for installation of the upper anchorage fittings;
- an explanation of the new shoulder designation system for choosing an appropriate child restraint;
- informative labelling, instructions, marking and packaging; and
- clothing for test dummies, spacers for attachment to test dummies, and recommended dummy types.

The 2013 version of AS/NZS 1754

AS/NZS 1754 was revised during 2011 – 2013 and published in June 2013 as AS/NZS 1754:2013. It introduced a number of new elements including: features that an ISOFIX⁶ compatible child restraint must meet, a new Type A4 child restraint allowing children to stay rear facing for longer, changes to the inbuilt harnesses to cater for children up to about 8 years old and provision of an instruction booklet with the child restraint.

Two new testing requirements, one relating to the test sled used and another requiring regular testing of products (or batch testing) have been introduced to demonstrate on-going product compliance with the AS/NZS 1754:2013.

4. The Australian Consumer Law

The ACL is a single, national law covering consumer protection and fair trading which applies in the same way nationally and in each state and territory of Australia.

Australian Government policy requires that each regulatory proposal or consideration contemplate whether the proposed regulatory intervention is necessary and test which is the best option available. It is important to note that when the safety standard was last reviewed, the full impact of the ACL had not become clear.

The ACL includes a number of provisions which are particularly relevant to consider as part of this review as they may be used by Fair Trading agencies and in the absence of a mandatory standard. This is discussed further below.

Section 18 of the ACL is one of a number of provisions which provides general protection to consumers. It states that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Section 29 of the ACL is a provision which provides a specific protection to consumers against false or misleading representations about goods.

⁶ ISOFIX is the method of attachment which allows a child seat to clip into two rigid or flexible lower anchorage points in a motor vehicle. International Organisation for Standardisation standard ISO 13216 - attachment points for child safety seats in passenger cars specifies the anchoring system for child safety seats in the EU and is known as "ISOFIX". This ISOFIX mechanism for attaching the seat to the lower anchors is quite different from that used in the United States and very different from the top tether and motor vehicle seat belt system used in Australia.

Together, these two sections mean that a supplier must not engage in conduct that is false, misleading or deceptive or likely to be so. An incorrect representation by a supplier that a child restraint system for use in motor vehicles meets a particular standard may be proved to be a breach of one or both these provisions. Similarly, an incorrect representation that a child restraint system will meet a user's obligation under road safety regulations to only use a child restraint which meets AS/NZS 1754 may also be proved to be a breach of one or both these provisions.

Section 54 of the ACL provides for consumer guarantees that goods are of acceptable quality including that they are free from defects and safe. Section 55 provides consumer guarantees that goods are reasonably fit for any disclosed purpose. These provisions are relevant in that child restraints must be free from defects, safe and reasonably fit for any purpose. A parent or carer purchasing a restraint will be doing so for a variety of reasons including, to protect a child being transported and to comply with state and territory 'use' laws (see discussion below).

The ACL provides for consumers to take action against suppliers and in some cases manufacturers for a breach of consumer guarantee provisions. Section 277 provides for the regulator to take action on behalf of consumers (with their written consent).

Section 122 of the ACL provides for the compulsory recall of consumer goods which will or may cause injury to any person. In the majority of cases where unsafe goods are identified, the ACCC and the supplier of the goods negotiate a voluntary recall. However, the option to use powers in the ACL to compulsorily recall unsafe goods is also available.

5. The Australian consumer product safety system

Section 105(1) of the ACL allows the Commonwealth Minister to declare an Australian Standard either in whole or part, with additions or variations, to be a safety standard for consumer goods. Section 104 of the ACL allows the Commonwealth Minister to make a safety standard for consumer goods which sets out requirements for those consumer goods which may be reasonably necessary to prevent or reduce the risk of injury to any person.

Section 106 of the ACL states that a person must not in trade or commerce, supply, offer for supply or manufacture for supply, consumer goods of a particular kind if those goods do not comply with a safety standard currently in force for those goods.

A safety standard for child restraints regulates the *supply* of restraints. The term 'supply' in relation to consumer goods (such as child restraints) means to supply by way of sale, exchange, lease, hire or hire-purchase.

Safety standards made under the ACL are co-operatively enforced by the ACCC and state and territory fair trading agencies.

6. Child restraint 'supply' and 'use' laws

While the CCA provides for the development and enforcement of safety standards which affect the *supply* of child restraints it does not allow for laws which govern which restraints can be legally *used* in each jurisdiction. That responsibility falls to state and territory road safety agencies.

State and territory road and traffic agency Ministers make legislation in relation to child restraint use. Each state and territory requires that a child carried in a motor vehicle is restrained in a way appropriate to their age and size and that the restraint used be one approved by state and territory road safety regulation. Each jurisdiction then defines an approved restraint. These use laws are enforced by Police in each state and territory.

Whilst use laws may vary slightly between states and territories, they are all based on AS/NZS 1754. At least one jurisdiction requires that child restraints be certified⁷ as meeting AS/NZS 1754 while most require that restraints comply with the standard.

There is some variation in the specifics of which versions of AS/NZS 1754 are legal to use in the various jurisdictions. The Commonwealth has no power in relation to these laws and any action flowing from the current consultation will not affect them.

7. Review of the safety standard

Following the public comments made in response to the November 2013 consultation, discussion with experts and interested groups and further research and review, the ACCC is now actively considering the best way to ensure that child restraints supplied to the Australian market provide protection to children in motor vehicles.

This active consideration was triggered by comments expressing concern over differences between the requirements in AS/NZS 1754 (various years) and the safety standard and, specifically, the proposal that some provisions of AS/NZS 1754:2013 not be incorporated in a new safety standard. Stakeholders, particularly road safety authorities, were concerned that any variation between the requirements in AS/NZS 1754 and in the safety standard had the potential to allow non-compliant (with AS/NZS 1754), possibly unsafe, restraints to be sold and/or the potential to contribute to confusion among suppliers and consumers over the differences.

While there is no evidence that these concerns have manifested themselves since the introduction of the safety standard in 1978, the ACCC is of the view that these are important issues which should be properly considered and that the current method of supporting the road safety objectives associated with child restraints may not be the best way forward in the current legal environment.

As noted above, the safety standard was first made under the provisions of the TPA and came into effect on 7 November 1978 and was last amended 7 May 2011. At the time this was the principle means of regulating what child restraints could be supplied (and therefore used) in Australia.

State and Territory authorities started to enact regulations in the mid-1980s stipulating which child restraints were to be used in their jurisdictions. It became illegal to use child restraints which did not comply with a version, or versions of AS/NZS 1754 and the systems of 'supply' regulation and 'use' laws has overlapped for more than 25 years.

⁷ At the moment this service is conducted by SAI Global and incorporates third party assurance that a particular product meets the specified requirements of AS/NZS 1754. SAI Global Standards Mark™, or the 5 Tick Mark, on the product represents reliability, quality assurance and safety and is a visible, recognisable method of consumers identifying compliant child restraints. See <http://www.saiglobal.com>

In recent years the AS/NZS 1754 has matured considerably, grown more complex and longer, doubling in length in 2013. At the same time the national transition from the TPA to the ACL has introduced a new consumer guarantee regime relating to acceptable quality.

In reviewing the responses to the November 2013 Consultation Paper and in subsequent research and discussion the ACCC has noted a number of issues relating to the overlapping system of regulation.

- **Duplication/Efficacy** – the safety standard partially duplicates with fewer requirements the provisions of the road safety (or ‘use’) laws using requirements from AS/NZS 1754. Road safety ‘use’ laws and the requirements of the sole body presently registering compliance (SAI Global) ensure that all products on the market comply with all requirements of AS/NZS 1754. No child restraints are produced that only conform to the safety standard. There is no prospect this situation will change.
- **Contribution to safety/efficiency** – it appears that the safety standard has not had a direct effect on child restraints since road regulations required full compliance with AS/NZS 1754. For at least ten years (from 1978) the safety standard was ‘reasonably necessary to prevent injury’ as the only regulation on performance requirements for child restraints. States and Territories have had nationally consistent requirements to use AS/NZS 1754 compliant restraints for at least 20 years. All State and Territory road safety ‘use’ laws require full compliance with AS/NZS 1754 as a minimum with one State (South Australia) requiring certification to AS/NZS 1754.
- **Actual/Potential mismatch in safety standard/use requirements** – road authorities and safety organisations express anxiety over actual and or perceived differences between the safety standard and AS/NZS 1754 on the basis of their potential to adversely affect road safety outcomes. Specifically they are concerned that restraints which may be non-compliant with AS/NZS 1754 will be sold and that consumers are or will be confused.
- **Confusion – with two different types of regulation by two safety related authorities/regimes** – any differences between the safety standard and the road safety use laws are difficult for non-experts to understand both in principle and in detail. Having different requirements from the two areas of authority (those regulating supply and those regulating use) gives rise to concern of consumer confusion. It is argued that the user laws are simple: “use an Australian Standard restraint”.
- **Adjustments are incremental and safety improvements hard to quantify:** The AS/NZS 1754 standard doubled in length between the 2010 and 2013 versions. The 2010 standard involved a substantial change, in moving to a height based system (previously weight and age based) and the 2013 version introduced the notion that child restraints with ISOFIX features can be AS/NZS1754 compliant (and the rebound sled and batch testing). Many changes in AS/NZS 1754 are incremental and/or small – for example changes in the weight of a hyphen, in a font size or in the style of text from justified to centred format. As such ‘safety improvements’, which form the basis of power to regulate under the ACL and underpin adjustments in the safety standard, can be difficult to identify and measure.

ISOFIX (under various names) is a standard for attaching child restraints to vehicles without using seat belts. ISOFIX anchorage points are now regularly supplied in Australian vehicles, e.g. GM Holden advise these are now standard fittings, and in imported vehicles. The system has been in development since 1997. The 2013 revision is the first time ISOFIX features have appeared in AS/NZS 1754.

- **Specific regulatory difficulty mandating some provisions of voluntary standard** – the 2013 version of AS/NZS 1754 includes two provisions that are considered by stakeholders to be of great significance but which are considered difficult to incorporate into a safety standard. These are the specification of a test mechanism (rebound sled) and a regime for regular product testing (batch testing). The proposal in the November 2013 Consultation Paper to exclude these from a remade safety standard elicited significant concern and adverse comment.
- **Mandatory standard process brings delays, duplicate processes, uncertainty in timing:** once a revised version of AS/NZS 1754 is published the ACCC practice has been to review the changes and then conduct a public consultation on possible changes to the safety standard. As most stakeholders contribute to the development of AS/NZS 1754 or comment on the draft standard the process for the safety standard partly duplicates the comment process for AS/NZS 1754. With best endeavours, there is usually about a year between the publication of the latest version of AS/NZS 1754 and registration of the revised safety standard. Industry indicates that in the absence of the safety standard process they would immediately start manufacturing to the revised AS/NZS 1754 upon publication. The current revision of the safety standard is causing uncertainty for industry because of consumer demand for restraints with ISOFIX features which the new version of AS/NZS 1754 includes for the first time. This issue is made even more complex because previous versions of AS/NZS 1754 were silent on child restraints with ISOFIX features and there was an assumption, perhaps misplaced, that child restraints with ISOFIX features could not meet the requirements of earlier versions of AS/NZS 1754 or the safety standard.
- **The safety standard has never been used to prosecute suppliers and there is minimal concern over 'unsafe' products.** There is little or no safety concern with child restraints (the 2013 review identifies few safety concerns with child restraints). In the Australian market there have been markedly fewer product recalls than in the US. There have been safety warning notices issued about online purchase and media alerts issued warning against importing restraints built to overseas standards. Key stakeholders note that most discussion is about correct fitting and the only product issues are about quality assurance errors that have been identified by suppliers.
- **Other tools are available to support safety.** The ACCC believes the recall and general consumer guarantee provisions of the ACL are sufficient to maintain the safety of child restraints (without the need for a safety standard). On the basis that any child restraint that does not comply with AS/NZS 1754 cannot legally be used, it is most unlikely to be of acceptable quality, 'fit for purpose', 'of merchantable quality' and probably be 'unsafe' (elements of the Consumer Guarantees regime under the ACL).

The capacity of the ACCC to stop the sale of unsafe child restraint products and to have the product recalled removed from the market will remain. The penalties associated with non-compliance with a safety standard will no longer be available. Relevant general powers within the ACL include:

- Section 18 of the ACL states that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- Section 29 of the ACL protects consumers against false or misleading representations being made about goods.
- Claims of compliance with the Australian Standard must be truthful or suppliers risk breaching section 18 and/or section 29 of the ACL.

- Section 54 of the ACL provides consumer guarantees that goods are of acceptable quality including that they are free from defects, safe and fit for all the purposes for which goods of that kind are commonly supplied.
- Section 122 and 128 of the ACL provides for recall of goods which “will or may” cause injury.

8. Proposed option

The ACCC is proposing to move to use of the general powers of the ACL to support the existing State and Territory road user regulations relating to child restraints and to support AS/NZS 1754.

The advantages of the change include: the end of any conflict or perceived conflict between the mandatory safety standard and road regulation user laws; a clearer message to suppliers to comply with, and consumers to use child restraints that meet, AS/NZS 1754; a reduction in delays in implementing revisions to AS/NZS 1754; removal of an unnecessary layer of regulation and consultation process; and, of primary importance, no change in the performance and safety of child restraints.

Such a change would neither exacerbate nor resolve some issues in relation to child restraints including existing minor inconsistencies in use laws across the jurisdictions; individuals importing and using restraints that are non-compliant with AS/NZS 1754; children being placed in inappropriate restraints; or children being carried unrestrained.

Submissions in this public consultation and additional information provided by stakeholders will inform advice prepared for the Commonwealth Minister on how best to support the safety of child restraints.

If the proposal to rely on the general powers of the ACL is to be implemented the existing safety standard would be revoked and all publicity material and information on the Product Safety Australia website would be revised to refer to AS/NZS 1754 and to the state and territory road use regulations.

If further investigation indicates that the proposed use of the general powers would not be effective or efficient in maintaining the safety of child restraints the ACCC would prepare advice to the Minister on revision of the existing safety standard.

9. Consultation

Stakeholders are invited to make submissions or comment on the proposal outlined in the paper. Stakeholders are requested to explain the thoughts behind their position and, where relevant, provide supporting evidence or documentation.

Stakeholders that support the preferred option should still make a submission and provide reasons for supporting that option.

It would be of assistance if submissions address three areas:

- The principle of using the general provisions of the ACL to support the Australian Standard and the existing road authority use laws.
- Issues or arguments on the detail of use of the general powers of the ACL and the revocation of the existing safety standard.
- Information or research relating to the issues or arguments, particularly those relating to costs and to differences in cost under the existing and proposed mechanism of support.

Submissions should be sent to the ACCC by close of business, Friday 18 July 2014, via:

- Internet via the ACCC Consultation hub (<https://consultation.accc.gov.au/>).
- Email: productsafety.regulation@acc.gov.au
- Post:

Director
Recreation and Automotive Products
Product Safety Branch
Australian Competition and Consumer Commission
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If the information provided is of a confidential nature the details provided by you will be treated confidentially. That is, the ACCC will not disclose the confidential information to third parties, other than advisors or consultants engaged directly by the ACCC, without first providing you with notice of its intention to do so, such as where it is compelled to do so by law. Please note that any information which you believe to be of a confidential nature should be clearly marked or identified as confidential.

The ACCC may be compelled by law to disclose submissions (for example under subpoena or following a request under the *Freedom of Information Act 1982*). For more information see the ACCC-AER Information Policy available via www.accc.gov.au.

Word and PDF copies of this Consultation Paper can be found on the Product Safety Australia website at: <http://www.productsafety.gov.au/content/index.phtml/itemId/1007885>.

Appendix E: Summary Table of Comments in response to July 2014 consultation



