



9 September 2022

Director
Infant Inclined Products
Australian Competition & Consumer Commission
Via email: IIPMarketReview@accc.gov.au

Dear ACCC,

RE: Consultation paper: Infant Sleep Products

A safe and secure Infant Sleep Product is one of the most important purchases that a parent can make for their family. Australian families suffer unimaginable losses when these products fail. Unsafe products can cause a child's death or serious injury and can have lasting and irreversible impacts on people's lives.

CHOICE welcomes the Australian Competition and Consumer Commission's ('**ACCC**') consultation on policy options to reduce the risks of Infant Sleep Products.

CHOICE strongly supports a ban on the supply of harmful Inclined Sleep Products in Australia alongside holistic mandatory safety and information standards for Infant Sleep Products ('**Option 7**'). Inclined Sleep Products are extremely harmful and can contribute to suffocation or positional asphyxiation of infants. This prohibition will bring Australia in line with international jurisdictions, including with New Zealand and Canada, who have a ban on the sale of Inclined Sleep Products with a sleep surface incline of greater than 7 degrees.

CHOICE supports the ACCC's proposal for a mandatory safety and information standard for Infant Sleep Products. Our National Association of Testing Authorities ('**NATA**') accredited laboratory regularly reviews Infant Sleep Products such as bassinets that fail key safety requirements and risk causing death.

The CHOICE laboratory also regularly tests unsafe Household Cots and Folding Cots which are sold on the Australian market. CHOICE strongly supports updating the respective mandatory standards and allowing compliance with trusted international standards ('**Options F4 and H4**'). This approach will improve the safety of cots on the market and bring Australia's product safety regime in line with international best practice.

While greater standards to Infant Sleep Products are important, CHOICE supports a general safety provision for all products sold in Australia. This proactive provision in the Australian Consumer Law would require suppliers to ensure the products are safe.

Key recommendations

1. The ACCC should recommend to the relevant Commonwealth Minister a permanent ban on the supply of Inclined Sleep Products alongside holistic mandatory safety and information standards for Infant Sleep Products (Option 7).
2. The ACCC should include cot mattresses within the scope of the mandatory Infant Sleep Products safety and information standards.
3. The ACCC should recommend to the relevant Commonwealth Minister to amend the Household Cots Mandatory Standard and Folding Cots Mandatory Standard and allow compliance with trusted international standards (Options F4 and H4).
4. The ACCC should recommend that the Federal Government legislate a general safety provision that requires companies to sell products that are safe.

Question 4. Which of the proposed options do you prefer and why?

Inclined Sleep Products

CHOICE strongly supports a permanent prohibition on the supply of Inclined Sleep Products in Australia (**Option 7**). Inclined sleepers are a soft, sloping surface that can cause babies to suffocate or die from positional asphyxiation. CHOICE's NATA accredited laboratory does not test Inclined Sleep Products for consumer use due to the known safety hazards.

There is clear evidence establishing the link between Inclined Sleep Products and infant mortality and serious injury. Between January 2005 to June 2019, the United States Consumer Product Safety Commission ('CPSC') reported 1,108 incidents and 73 fatalities associated with the use of Inclined Sleep Products.¹ This study revealed that babies are much more likely to suffocate by rolling onto their stomach in an inclined sleeper than on a flat sleep surface. The findings led researchers to conclude that not only do babies turn onto their tummies easier in an inclined sleeper, but once they are there, they can easily exhaust themselves and suffocate while trying to change position so that they can breathe.

The design of an Inclined Sleep Product also means that when a baby is laying on their back in an inclined sleeper, their airway can become compromised, which can lead to positional asphyxiation.

Because of these unacceptable risks, infant Incline Sleeper Products should be prohibited from sale. A prohibition will bring the Australian product safety regime in line with key international

¹U.S. Consumer Product Safety Commission, 2019, 'CPSC Cautions Consumers Not to Use Inclined Infant Sleep Products', <https://www.cpsc.gov/Newsroom/News-Releases/2020/CPSC-Cautions-Consumers-Not-to-Use-Inclined-Infant-Sleep-Products>

jurisdictions, including Canada and New Zealand which have banned a sleep surface incline of greater than 7 degrees.

Infant Sleep Product standards

CHOICE strongly supports the ACCC's proposal to establish a mandatory safety standard and information standard for Infant Sleep Products, to complement this immediate prohibition as outlined in Option 7.

There are significant product safety risks with Infant Sleep Products on the Australian market. The CHOICE laboratory regularly tests Infant Sleep Products, such as bassinets and portable cots, that fail key safety risks and pose life-threatening risks to infants. In our 2022 safety testing of Australia's most popular portable cots, our technicians found that six out of 11 products failed to meet both voluntary and mandatory Australian standards that CHOICE conducts its testing against.²

CHOICE supports a broad definition of products that are included in Infant Sleep Products. The consumer experience is that babies sleep in and on lots of different products, many of which are not intended for infant sleeping.

Bassinets

CHOICE supports the ACCC's proposal for bassinets to be included in the mandatory Infant Sleep Products safety standard and information standard. CHOICE experts review bassinets on the market that fail key safety requirements. In 2021, five out of eight tested bassinets failed key safety requirements.³ In 2019, 24 out of 33 reviewed bassinets failed key safety requirements. The tested products posed potential suffocation hazards, and head and limb entrapment hazards. As recognised in the ACCC paper, current standards do not cover all current and emerging Infant Sleep Products such as bassinets, so changes are required to bring Australia in line with international best practice for product safety regulation.

Cot mattresses

CHOICE recommends that the ACCC includes cot mattresses within the scope of the mandatory Infant Sleep Products regime. Cot mattresses can be legally sold in Australia without meeting any product safety requirements. A cot mattress with a sleeping surface that's too soft increases the risk of fatal sleeping accidents.⁴

²CHOICE, 2022, 'More than two-thirds of portacots tested by CHOICE fail safety standards', <https://www.choice.com.au/babies-and-kids/baby-transport/portable-cots/articles/portacots-fail-mandatory-and-voluntary-australian-standards>

³CHOICE, 2021, 'More baby bassinets fail CHOICE safety tests' <https://www.choice.com.au/babies-and-kids/baby-furniture/cots/articles/bassinets-fail-safety-tests>

⁴Red Nose, Information Statement, 'Second Hand Mattresses', https://rednose.org.au/downloads/Second_Hand_Mattresses_Information_Statement_April_2017.pdf

Consumers regularly purchase cot mattresses to use within an existing Household Cot, meaning that infants are at a significant risk of death or serious injury. The existing standard test method for firmness, AS/NZS 8811.1:2013 Method 1: Sleep Surfaces – Test for firmness is not mandatory for cot mattress makers. This standard should be mandatory and applied to cot mattresses.

Recommendations 1 - 2

1. The ACCC should recommend to the relevant Commonwealth Minister a permanent ban on the supply of Inclined Sleep Products alongside holistic mandatory safety and information standards for Infant Sleep Products (Option 7).
2. The ACCC should include cot mattresses within the scope of the mandatory Infant Sleep Products safety and information standards.

Question 15. Which of the proposed options do you prefer and why?

Household cots and Folding Cots

Cots are a crucial purchase for any family. The risks of an unsafe Household Cot or Folding Cot can include head or limb entrapment, strangulation, choking, suffocation and falls. The CHOICE laboratory tests Household Cots and Folding Cots to the Voluntary Standards as they capture additional known risks, including mattress firmness (for Household Cots) and drop sides (for Folding Cots).

CHOICE strongly supports the Household Cots Mandatory Standard and Folding Cots Mandatory Standards being updated by amending the most recent representative Voluntary Standards and allowing compliance with trusted international standards (**Options H4 and F4**). This approach will bring Australia's product safety regime in line with international best practice. CHOICE is supportive of this measure provided there is no weakening of safety standards for Household Cots and Folding Cots.

While all Household Cots available in Australia should meet the mandatory safety standard, CHOICE researchers have found many do not. Between 2012–20, 57% of Household Cots tested have failed to meet key safety requirements, a figure that has gradually improved.⁵ Currently, 19% of currently available cots on the market that CHOICE experts have tested have serious safety failures.

⁵CHOICE 2020, 'Cot safety is improving, gradually', <https://www.choice.com.au/babies-and-kids/baby-furniture/cots/articles/cot-safety-is-improving>

CHOICE tests Folding Cots against the most current Australian standard for portable cots, AS/NZS 2195:2010, and also against the mandatory standard (which is based on a 1999 version of the standard). In 2021, 16 out of 24 currently available portable cots reviewed by our experts failed to meet key safety standards.⁶ As raised earlier in this paper, six of the 11 products tested failed in 2022.

The main concern with Folding Cots tested from CHOICE safety experts was a lack of mattress firmness which presents a suffocation risk to children. CHOICE scored Mamakiddies Baby portable cot 0% due to the risks of falling, entrapment and insufficient warning labels. CHOICE also failed the portable cot due to failures of voluntary requirements such as suffocation and strangulation risks, reinforcing the need for the mandatory standard to encompass the voluntary requirement. As a result of CHOICE's review, the ACCC issued a product recall of this product in August 2021.⁷

Recommendation 3

The ACCC should recommend to the relevant Commonwealth Minister to amend the Household Cots Mandatory Standard and Folding Cots Mandatory Standard and allow compliance with trusted international standards (Options F4 and H4).

Question 27. Provide any additional information or data you think may be useful to inform the ACCC's recommendation to the Minister.

The need for a legislated General Safety Provision

Strongly enforced mandatory standards will provide an effective control in preventing harmful Infant Sleep Products from entering the Australian market. However, they are an incomplete solution to a wider problem. As noted by the ACCC's Infant Sleep Products paper, "The Australian product safety regime does not have a general safety provision that prohibits unsafe goods being supplied".⁸

A General Safety Provision would require companies to ensure the products they sell are safe before bringing them to market. Since companies are not legally required to assess whether products are safe, many simply don't take proactive steps to ensure the safety of their products. The absence of this requirement represents a large gap in the protections offered under the consumer law and leaves consumers, particularly babies and children, vulnerable to harm from unsafe products.

⁶CHOICE, 2021, 'Two-thirds of portacots tested by CHOICE fail safety standards'

'<https://www.choice.com.au/babies-and-kids/baby-transport/portable-cots/articles/portacots-fail-mandatory-and-voluntary-australian-standards>

⁷Product Safety Australia, 2021, Pharmrec Trading Pty Ltd — Mamakiddies Happy Dino Portable Travel Cot,

<https://www.productsafety.gov.au/recalls/pharmrec-trading-pty-ltd-%E2%80%94-mamakiddies-happy-dino-portable-travel-cot>

⁸ ACCC, 2002, Infant Inclined Products and Infant Sleep Products – Consultation Regulation Impact Statement, p.7



Post-market controls such as bans and recalls are reactionary and allocate the onus of proving harm to the consumer rather than the trader. This model is outdated in comparison to overseas product safety frameworks. A General Safety Provision provides a overall pre-market control on unsafe products entering the market, thereby reducing the significant risk of consumer harm that can be caused by unsafe products.

Recommendation 4

The ACCC should recommend the Federal Government legislate a general safety provision that requires companies to sell products that are safe.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Patrick Veyret".

Patrick Veyret
Head of Policy and Government Relations
CHOICE