



Fair
Trading

CHILDREN AND WINDOW SAFETY
CONSULTATION PAPER





Published by:

NSW Fair Trading

PO Box 972
PARRAMATTA NSW 2124

Tel. 13 32 20

www.fairtrading.nsw.gov.au

© State of New South Wales through NSW Fair Trading, 2013
You may copy, distribute, display, download and otherwise freely deal with this information provided you attribute NSW Fair Trading as the owner. However, you must obtain permission from NSW Fair Trading if you wish to 1) modify, 2) charge others for access, 3) include in advertising or a product for sale, or 4) obtain profit, from the information. Important:

For full details, see NSW Fair Trading's copyright policy at www.fairtrading.nsw.gov.au/copyright.html or email publications@services.nsw.gov.au

Disclaimer

Every effort has been made to ensure that the information presented in this discussion paper is accurate at the time of publication. Because this discussion paper avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

13 March 2013



Table of Contents

1 MINISTER’S FOREWORD	1
2 INTRODUCTION	2
3 BACKGROUND.....	4
<i>THE CHILDREN’S HOSPITAL AT WESTMEAD WORKING PARTY</i>	<i>4</i>
<i>CHILD SAFETY EDUCATION CAMPAIGN 2009-2011.....</i>	<i>6</i>
4 PROPOSALS	8
<i>MANDATORY WINDOW SAFETY DEVICES ON WINDOWS IN STRATA BUILDINGS.....</i>	<i>8</i>
<i>EXEMPTIONS FOR SAFETY AND ENVIRONMENTAL FACTORS.....</i>	<i>11</i>
<i>AUTOMATIC RIGHT TO INSTALL SAFETY DEVICES, REGARDLESS OF BY-LAWS.....</i>	<i>12</i>
<i>RESIDENTIAL TENANCY CONDITION REPORT</i>	<i>13</i>
<i>IMPLEMENTATION PERIOD.....</i>	<i>13</i>
<i>SANCTIONS AND REMEDIES</i>	<i>14</i>
5 FEEDBACK PROCESS AND NEXT STEPS.....	15

1 Minister's Foreword



The NSW Liberals and Nationals Government is concerned by the number of fatalities and serious injuries caused as a result of young children falling from windows and balconies in multi-storey apartment buildings. It saddens me to know that these deaths and injuries are often preventable.

With the knowledge that over the coming years an increasing number of people will be living in apartment buildings, it is time for us as a community to explore legislative options that will improve the safety of all children in multi-storey buildings.

As Minister for Fair Trading I have responsibility for the *Strata Schemes Management Act 1996* and the *Residential Tenancies Act 2010*. The Children's Hospital at Westmead Working Party for the Prevention of Children Falling from Residential Buildings recommended, among other things, that laws under these two Acts be amended to include measures that would help to prevent children falling from windows. The Working Party's recommendations in relation to these two Acts will be explored in this consultation paper.

The NSW Government has chosen to implement these recommendations, namely by mandating the installation of window safety devices at residential strata schemes and adding window safety devices to the list of items in the premises condition report for residential tenancies.

It is important to remember when reading this paper that incidents involving children falling from buildings can result in a child losing their life or suffering for many years, or even permanently, as a result of injuries. In 2011-12, thirty-nine children aged 9 or below were hospitalised in New South Wales due to falls from windows.¹ The Government is committed to improving children's safety and I am keen to hear all views on how best to implement the changes highlighted in this paper.

¹ NSW Admitted Patient Data Collection, administered by the NSW Ministry of Health

2 Introduction

A number of children are admitted to hospital each year as a result of falling from a window in a residential building. Tragically, falls of this nature are often associated with serious and fatal outcomes.

Children aged from one to five years of age are most at risk, as they are naturally curious but lack the ability to judge potential danger. These types of falls occur more often in spring and summer when windows are more likely to be open.

To help prevent the incidence of falls, the NSW Government has decided to adopt a broad range of measures. These will be implemented by: an amendment to the *Strata Schemes Management Act 1996* (the Act), that will require owners corporations to install safety devices on all windows in strata buildings that could present a safety risk to young children, with a five-year implementation period; a further amendment to the Act allowing individual owners to install window safety devices regardless of the by-laws of a scheme; and an amendment to the Residential Tenancies Regulation 2010 to include window safety devices in the prescribed condition report for rental premises.

Reducing child injury is consistent with the *NSW 2021* commitment to keep people healthy and out of hospital. *NSW 2021* is the Government's 10 year strategic plan to rebuild the State's economy, return quality services, renovate infrastructure, restore accountability to government, and strengthen our local environment and communities.

Since the introduction of NSW's strata title laws in 1961, there has been a steady increase in the proportion of strata-titled residential developments being built. In coming decades, as many as half of all residential dwellings in metropolitan areas will be strata-titled.²

The NSW Government is now seeking the views of the community about how to apply these new window safety standards in residential strata buildings. In particular, we

² Residential Strata in NSW: A summary analysis, Issue 1, April 2010, City Futures Research Centre

would like to know how to best implement these measures and what the most appropriate safety device/s might be.

The change to the Residential Tenancies Regulation 2010 is a straightforward administrative measure that will not impose any extra costs on landlords or tenants.

This Consultation Paper has been prepared to help you explore some of the main issues associated with the proposed reforms. Your views on these and other matters will help to inform the final reform Bill that will be presented to Parliament seeking to put these changes into law.

3 Background

In 2011-12, thirty-nine children aged 9 or below were hospitalised in New South Wales due to falls from windows.³ The majority of these incidents involved children under four years of age and in many cases the consequent injuries were significant. Falls from buildings often result in death, or severe injuries and permanent disability, and there is community concern about this preventable form of child injury.

The severity of the resulting injuries can mean a young person will need life long medical treatment and/or significant assistance with their daily living activities from family members, or will have to be cared for in a nursing home. The costs for both the public health system and families are significant, in addition to the non-measurable impact of the trauma experienced by families.

The Children's Hospital at Westmead Working Party

In 2008, based on the treatment of children presenting to the Children's Hospital at Westmead (CHW) the CHW identified falls of children from residential buildings as an increasing cause of injury that was often associated with serious outcomes. As a result, CHW established a working party to convene a consultative forum to effectively address the issue. The *Working Party for the Prevention of Children Falling from Residential Buildings* was chaired by CHW and comprised representatives from CHW as well as external experts on building regulations, local government, planning and product safety.

According to CHW data, child falls from buildings most frequently involve children aged between 2 and 4 years. Toddlers are more prone to falls due to their curiosity and reduced ability to judge potential dangers. Incidents of child injury from these causes occur more often in spring and summer when balcony doors and windows are more likely to be open.

Specific NSW data on child deaths in the period 1997 to 2005 for young people aged 18 years or less suggests that there were 15 deaths as a result of a fall from, out of or

³ NSW Admitted Patient Data Collection, administered by the NSW Ministry of Health

through a building.⁴ In this data, 'falls' incorporate a broader range of causes than windows and balconies.

Based on accident information collected by CHW from parents of injured children, the behaviour of the child (e.g. climbing or jumping) or parent (e.g. insufficient supervision of children or allowing furniture to be placed near open windows or balcony balustrade) contributed to the majority of incidents.

These behavioural causes appeared in conjunction with specific building component issues. Examples of these component issues are low window sills or low balcony balustrades, fully open or freely openable windows, and lightweight window insect screens that may have created a false sense of security. Therefore, both building component and educational strategies are needed.

The Working Party Report identified children of recent migrants as a higher risk group as "children who live in apartments are overwhelmingly young children and children of recent migrants".⁵ The Report also states that the majority of children who live in high-rise buildings in Sydney are children of tenants (as opposed to owner occupiers). It is possible that some, or even many, of these tenants are unaware that they can install some basic window safety measures without needing the landlord's approval.⁶

The Working Party also found that there were different issues for new and established buildings. New building standards do not automatically apply retrospectively to existing structures. Many older buildings have elements that would have met the minimum safety requirements at the time of their construction, but which do not meet (and are not required to meet) today's building codes and standards.

In February 2011, the Working Party's Outcomes Report was released. The Report made 16 recommendations that fall into five groups:

⁴ Mitchell R and Chong S, *Report for the Commission for Children and Young People's Injury Prevention Reference Group* (2009), NSW Injury Risk Management Centre, The University of NSW, Sydney

⁵ Randolph B, *Children in the Compact City: Fairfield as a suburban case history*, (2006), City Futures Research Centre, The University of NSW, Sydney

⁶ For example, placing a length of dowel into the track of a sliding window or door. However, the landlord's approval is required before any modifications are made to the property.

- a) Raising awareness through a Government education and awareness program to improve the recognition of fall risks and preventive measures amongst parents and carers and industry to reinforce the need for proper supervision of children.
- b) Incorporating window and balustrade safety features and safe, modern design into both new and existing buildings.
- c) Amending the residential tenancy and strata scheme management laws that apply to existing buildings and require safety devices for windows *above* the ground floor to be provided by landlords and fitted by owners corporations for all common property openable windows.
- d) Reviewing standards for new and existing buildings to determine whether existing residential buildings should be required to upgrade the safety of windows and balustrades, and reviewing standards in the Building Code of Australia for windows and balconies in new residential buildings.
- e) Improving data collection and research on building fall incidents.

Child Safety Education Campaign 2009-2011

In October 2009, the then Premier announced a child safety education campaign to highlight the potential risks of falls for children around the home and to raise awareness of some simple actions that parents and carers could take to reduce these risks.

The education campaign commenced in October 2009 when the Government launched *Protect Your Child: falls from heights can be prevented*. The initial phase of the education campaign used newspaper and radio advertisements, online publications, distribution of fact sheets and other information to childcare centres, and additional information in the baby 'blue book' given to new parents to get the message out. The second phase of the campaign commenced in November 2010 when *Think Child Safe* was launched. *Think Child Safe* circulated revisions to *Protect Your Child* that were based on commissioned research and feedback from stakeholders.

In November 2011 the final phase of the campaign commenced when *Windows and Balconies* was launched. As part of this campaign, 40,000 copies of the *Think Child Safe* brochure and poster were also printed and distributed to licensed real estate agents, strata managers and community housing providers. To help reach the widest possible audience, the campaign educational materials were translated into community languages.

The CHW continues to publish and distribute *Kids Can't Fly* factsheets and posters about preventing child falls from windows and balconies. These factsheets and posters include descriptions and photos of affordable window safety products.

In addition to the Government's child safety education campaign, the NSW Land and Housing Corporation (**LHC**) has, since 2009, been promoting window safety for children in newsletters to LHC tenants. In July 2011, Housing NSW introduced a policy of installing key window locks on all openable windows in existing properties when requested by the tenant, and in vacant properties as part of its maintenance program.

The Australian Windows Association (**AWA**) produces window flyscreen stickers with a warning that a flyscreen will not stop a child falling out of a window.



The AWA also launched its own *Kids Can't Fly* campaign to raise awareness of this important child safety issue nationwide. The Master Builders Association provides pamphlets on this issue in its handover kits to new homebuyers.

NSW Fair Trading's latest child safety initiative is to send window safety flyers to new tenants with their rental bond receipts. This has been in operation since November 2012 and will see 430,000 flyers being sent out over 18 months.

NSW Fair Trading is also developing an instructional video which will show owners and tenants how to make their windows and balconies safe for young children. The video will soon be available on the Fair Trading website at www.fairtrading.nsw.gov.au.

4 Proposals

Mandatory window safety devices on windows in strata buildings

Recommendation 4 of the CHW Report proposed amending the Act to require owners corporations of residential strata schemes to install locks or other safety devices on all openable windows *above* ground floor to limit window openings to a maximum of 100mm.

There is no readily available or adequately detailed information to determine how many of the more than 70,000 strata schemes in operation in NSW have openable windows above ground level. Nonetheless we believe that many multi-level residential strata buildings do not have safety devices on upper storey windows.

NSW strata title laws have been in operation for more than 50 years, so there are a wide variety of window designs and dimensions to consider. There are also strata schemes that were created by renovating old commercial buildings, such as warehouses that may have been built more than 100 years ago. Some of these strata warehouse conversions have retained original design elements, including window design. Many pre-existing residential high rise buildings have been converted to strata schemes since the strata legislation commenced.

The majority of strata schemes in NSW have 10 lots or less. While some are purely single storey structures, and will not have to do anything to comply (i.e. if they do not have any windows above ground level), many are two or three storey buildings.

Under the model strata by-law that prohibits residents from damaging the scheme's common property (which generally includes external windows), individual owners generally still retain the ability to install safety devices on the windows in their own unit if they wish. One section of that model by-law states that an owner, or anyone authorised by an owner, is not prevented from installing any structure or device that would prevent harm to children. However, it is not known how many strata schemes have adopted this model by-law in full, nor how many lot owners have taken advantage of it to install window safety devices in their lots.

Whether or not owners decide to make use of their rights under this by-law may depend on their awareness of the risk of falls, and of how this risk could be significantly reduced by installing window safety devices. Other factors can influence the decision making process, for example owners corporations and individual owners may be discouraged from taking action due to uncertainty about what type of window safety devices to use, lack of time or expertise, or the costs for purchase and installation of safety devices. For strata residents who have never had children or small pets living in their unit, an openable window above ground level may not seem to pose any clear danger or potential risk. Existing strata scheme management laws do not provide sufficient incentive for owners corporations or individual lot owners to take action to minimise this risk.

To address this issue, we propose to amend the Act to compel owners corporations of residential strata buildings to install safety devices on all windows that present a safety risk to young children. Owners corporations and their agents would be specifically empowered to enter residents' units for this purpose and for maintenance when required. Owners corporations would bear full responsibility for ensuring that window safety devices that meet the required standard are installed on every window in the strata scheme that poses a safety risk to young children. Owners corporations would be able to arrange for all of the relevant windows in their scheme to be addressed at one time, which is likely to be at a lower per unit cost than if individual owners each acted alone.

The Act already obligates owners corporations to arrange access to the common property and residents' units for fire safety inspections. This new requirement would operate similarly.

Owners corporations will need information to help identify which windows at their strata building will need safety devices installed so that they can fulfil their obligations. There is no Australian standard for window safety devices, but a wide range of safety devices are currently available on the market that can be fitted to windows. These include locks and latches that restrict opening and reinforced window guards as well as other physical barriers like bars.

The National Construction Code (NCC) provides a helpful guide for identifying windows that could present a safety risk to young children. The NCC already requires a minimum internal windowsill height of 865mm. Under new NCC standards commencing in May 2013, openable bedroom windows that are more than two metres above the external ground level (as measured from the ground to the internal floor level below the window) must have either a fixed or lockable device so that the window can be locked with an opening of 125mm or less, or a screen of sufficient strength to prevent falls.⁷ The new NCC requirements will apply to the bedroom windows of new residential buildings.

A maximum two metre drop from the interior floor level of the room in which the window is found to external ground level provides a simple and straightforward means to assess which windows could pose the greatest safety risk to young children.

As noted above, there are many different window design features with different dimensions in residential strata buildings. For example, some buildings will have metal or wooden window frames that slide sideways, some will have double hung windows that slide up and down, and others will have windows that open out horizontally or vertically away from the interior of the room. The diversity of window designs and dimensions means that owners corporations and owners will need to have a high degree of flexibility to choose the most appropriate window safety device for their strata building.

For the same reasons, it is not realistic or practical to develop a prescriptive list of window safety devices that are acceptable. Instead, window safety devices will be subject to a performance standard and will have to meet the requirements in the NCC, as summarised below.⁸ We believe this 'outcomes' based approach is preferable.

Safety devices designed to fix a window **permanently** in one position must:

- be capable of restricting the window opening to 125mm; and

⁷ It must be able to resist an outward horizontal action of 250 Newtons.

⁸ NCC 2013 Public Comment Draft Volume One , Australian Building Codes Board, August 2012.

- be strong enough to withstand the pressure exerted by a child.

Safety devices designed to be **locked and unlocked** so that the window can be secured in more than one position must:

- be capable of restricting the window opening to 125mm;
- be strong enough to withstand the pressure exerted by a child; and
- have security or design features to prevent a child from unlocking it.

If window screens or bars are installed as the sole safety device, they must be robust enough to withstand the pressure exerted by a child. Basic fly screens do not meet this standard, but some reinforced screens do.

Together, these are known as the '**performance standard**' for window safety devices.

Questions for feedback:

1. Is the proposed threshold for determining if a window poses a safety risk to young children (a maximum drop of two metres from the interior floor level to external ground level) appropriate? Please give reasons.
2. Could a window that does not meet the above threshold (e.g. ground floor) still pose a safety risk to young children? If yes, could you please indicate the circumstances where this may be the case.
3. Are the proposed *performance standards* (which state what outcome a window safety device has to achieve to be compliant) sufficiently clear?
4. What types of window safety devices do you consider to be most effective?

Exemptions for safety and environmental factors

Openable windows in residential buildings, particularly one and two-storey buildings, can be used as escape routes in the event of a fire or other emergency. In some cities in the United States there are older apartment buildings with fire escapes that are accessed through above ground floor windows. In New York City, the use of window guards is mandatory, but exceptions are made for windows leading to fire escapes and window guards must be left off one window in each ground-floor apartment so that the window can be used as an emergency exit. We are not aware of whether any residential strata buildings in NSW have this type of fire escape.

There may also be other amenity or environmental factors that need to be addressed in the amending legislation.

Questions for feedback:

5. Do you know of any strata buildings in NSW that provide residents access to fire escapes through windows that are *above* ground level?
6. Are there any other safety and environmental factors that need to be accounted for in possible exemptions?
7. Could high windows or windows in rooms other than bedrooms, such as a bathroom window located close to the ceiling, pose any safety risk to young children? If not, should they be excluded?

Automatic right to install safety devices

In order to provide greater flexibility and a more streamlined process, individual strata owners could be permitted to take direct action to address window safety for their own unit. This would mean that lot owners in schemes which do not have the model by-law referred to above would be able to install window safety devices immediately, without the need for any action by their owners corporation. This measure would overcome any need to wait for the owners corporation to make the necessary changes.

Procedural guidance may be required to ensure that individual owners inform the owners corporation of their intention to install the safety devices, and also to confirm when the installation has been completed.

If the above proposal is implemented, the owners corporation would need to keep records of the units that have installed the window safety devices so to avoid duplication of costs and uncertainty regarding building compliance.

Questions for feedback:

8. Do you support lot owners having the automatic right to install window safety devices in their lot, regardless of whether their scheme has adopted the model by law on this topic? Please give reasons.
9. Are there any practical problems with this proposal? Please give details.

Residential tenancy condition report

The *Residential Tenancies Act 2010* provides a way for parents with young children living in rented properties to ensure that the windows are safe. Landlords cannot unreasonably refuse to give permission to tenants to make minor modifications to premises, such as installing child safety window devices.

Awareness of window safety for residential rental premises could be improved by including window safety devices in the prescribed condition report for the premises. This report must be completed by landlords and tenants at the beginning of a tenancy agreement. Listing window safety items in the prescribed condition report (and therefore having to indicate in the report whether or not working window safety devices are installed) will draw the attention of landlords and tenants to the need to consider whether these should be installed.

This will be implemented by a minor amendment to the Residential Tenancies Regulation 2010. This proposal will not impose any material costs on landlords or tenants and is expected to be uncontroversial. This proposal would be subject to a reasonable transition period to allow landlords and their agents to use up existing printed stocks of tenancy condition reports.

Questions for feedback:

10. Do you support condition reports having to state whether or not a premises has working window safety devices installed? Please give reasons.
11. Are there any practical problems with this proposal? Please give details.

Implementation period

We propose that the new requirements for installation of window safety devices be introduced through a five-year implementation period. This is to give sufficient time for affected buildings to become fully compliant.

First of all, owners corporations will need time to determine whether they are captured by the new requirements and to identify which windows will need safety devices. Owners corporations will need to hold general meetings where owners can consider

and vote on available options. It may also take some time for a strata scheme to raise the funds to pay for the window renovations and to arrange for the necessary work to be carried out.

Sanctions and remedies

The proposed amendments to the Act will place an obligation on owners corporations to ensure all windows that pose a safety risk to young children are fitted with appropriate safety devices.

Owners corporations that do not install window safety devices risk being held legally liable should injury occur because they have not complied with the law. Claims under some insurance policies may be denied in these circumstances, which may prompt owners corporations to act quickly and install the window safety devices.

There are already other legal obligations in the Act where an owners corporation can face penalties for non-compliance with the law. For example, penalties can be imposed if the owners corporation fails to comply with its requirements in relation to fire safety inspections.

Questions for feedback:

12. What (if any) sanctions should apply to owners corporations that fail to ensure all relevant windows in their strata scheme have window safety devices installed?

5 Feedback process and next steps

The Government is also undertaking a comprehensive review of NSW strata and community title laws, which is due to be finalised in 2014. However, given the urgent safety concerns, it has been decided to amend the Act to improve window safety sooner rather than later. Any comments that are provided in relation to this issue will also be considered during the comprehensive strata and community title law review.

The NSW Government values your feedback on this proposal. You do not need to answer every question presented in this paper and you are welcome to only address those matters that are important to you. Please, where possible, use the same headings and numbering for your answers and comments as in this paper.

While submissions may be lodged electronically, by post or by facsimile, we would prefer to receive submissions by email.

Please provide your written submission by **24 April 2013** to the address below:

Email to: policy@services.nsw.gov.au

Post to: Window Safety
 Fair Trading Policy
 PO BOX 972
 PARRAMATTA NSW 2124

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. Even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).



NSW Department of **Finance & Services**

NSW Fair Trading
PO Box 972
Parramatta NSW 2124
T: 02 9895 0111
F: 02 9895 0222
TTY: 1300 723 404
www.fairtrading.nsw.gov.au