



**CORONERS COURT
NEW SOUTH WALES**

Inquest:	Inquest into the death of Chatchaya ITTIVITHCHAI
Hearing dates:	19 January 2022
Date of findings:	7 February 2022
Place of findings:	NSW State Coroner's Court, Lidcombe
Findings of:	Magistrate C Forbes, Deputy State Coroner
Catchwords:	CORONIAL LAW – cause and manner of death-toddler's fall from a window in a residential apartment – whether window safety standards are adequate in company title residential apartments
File number:	2019/53408
Representation:	Mr J Herrington, advocate, instructed by Mr A O'Brien, Crown Solicitors Office
Findings:	I find that Chatchaya ITTIVEITHCHAI died on 16 February 2019 at Prince Alfred Hospital, NSW, as result of a blunt force injury of the head she sustained when she fell from a third-floor window which did not have a safety lock.
Recommendations:	<i>To the Minister for Planning and Homes and to the Minister for Fair Trading</i> I recommend that amendments be made to the <i>Environmental</i>

Planning and Assessment Act 1979 (NSW) and Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2000 (NSW) (and/or any other legislation considered appropriate) to ensure that child window safety devices (as defined in cl. 30 of the Strata Schemes Management Regulation 2016 (NSW) are required to be installed in all Class 2 buildings (as defined in the Building Code of Australia).

To the Minister for the Department of Planning, Industry and Environment

I recommend that there be consultation with the property industry and broader community by the Department of Planning, Industry and Environment regarding expanding the scope of the requirement for the installation of child window safety devices from residential apartments (Class 2 buildings as defined in the *National Construction Code*) to incorporate all residential dwellings such as houses, townhouses or terraces (Class 1a buildings as defined in the *National Construction Code*).

IN THE NSW STATE CORONER'S COURT
LIDCOMBE
SECTION 81 CORONERS ACT 2009

REASONS FOR DECISION

Introduction

1. This is an inquest into the very sad death of Chatchaya Ittveithchai, also called "Jinnie", who died when she fell from the bedroom window of her family's third-floor apartment on 16 February 2019. She was only 15 months' old.
2. There was no lock installed on the window of the apartment to restrict how far the window could open, and none was required by legislation as the building was governed by company title arrangements. Company title was the principal form of residential apartment ownership in apartment buildings before the introduction of strata title legislation in New South Wales in 1961.

The Coroner's functions

3. Sudden and unexpected deaths, especially such tragic deaths as Chatchaya's, affect not only her family and friends but also the wider community. This inquest considered whether any action can be taken that will prevent other similar deaths in the future.
4. The *Coroners Act 2009* provides that in an inquest, a coroner must, if possible, make findings of fact as to the identity of the person who died, the date and place of death, the cause of death, and the manner or circumstances of death. A coroner may also make such recommendations that appear necessary or desirable arising out of the case.

5. The manner of Chatchaya's death raises an important issue about children and window safety in apartment buildings, and about the scope of the current legislative requirement for the installation of child window safety devices in residential apartment buildings.
6. Currently, the law in NSW requires that such devices are fitted to applicable windows in strata title apartment buildings only.
7. The *National Construction Code* also requires that child window safety devices are installed in bedroom windows above a certain height in all residential buildings built after 2013.
8. NSW legislation and the *National Construction Code* impose no requirements for child window safety devices to be fitted in apartment buildings built before 2013 which are governed by other forms of title, such as company title. Chatchaya lived in one such building.
9. The main focus of this inquest is upon possible recommendations to address this anomaly.

Chatchaya Ittveithchai

10. Chatchaya's parents, Khemjira and Sanchai moved to Australia from Thailand in 2013. They married in 2014 and initially lived in the Sydney CBD.
11. In mid to late 2016, they moved into a block of residential flats at 148 Bridge Road in Glebe. They first lived in Unit 11 at that address before moving to Unit 25, where they lived throughout Chatchaya's life.
12. At the time of Chatchaya's death, Sanchai was employed as a barista and worked day shifts from Monday to Saturday. Khemjira worked as a massage therapist in the Sydney CBD and in Strathfield while also studying.

13. Pattaporn Ronnachaitana, Khemjira's friend and colleague, also lived with the family at the Unit. She would play with Chatchaya in the mornings and would babysit her on Fridays in the day while both parents were at work.
14. Chatchaya was a healthy child who was well loved and cared for by family and friends. Her parents still feel the unbearable pain of losing her. They described her as a lovable, good humoured child who was easy to care for. They are hopeful that something can be done to prevent a similar death in another family.

Unit 25, 148 Bridge Road, Glebe.

15. Chatchaya, her parents and Pattaporn all lived together in their one-bedroom unit. The unit was small, and a bedroom for Pattaporn had been fashioned in the living room by way of a makeshift, curtained partition. Chatchaya's parents' bed and Chatchaya's cot were placed next to each other in the bedroom, up against the bedroom window. One side of Chatchaya's cot was left open, so that she could move into her parents' bed.
16. The apartment complex at 148 Bridge Road is owned by four individuals as tenants in common in equal shares.
17. The block of flats is an older three-storey brick building (built before 2013), with around 30 units in the complex.

The events leading to Chatchaya's death

18. On 15 February 2019, the day before Chatchaya's death, Khemjira and Chatchaya woke up together, ate breakfast at 8am and went back to sleep. Khemjira attended work in Strathfield at around 11am and returned home at about midnight.
19. Khemjira stated to police that when she returned home, Chatchaya was asleep on the queen-sized bed with Sancha. She said that the bedroom window was open at that time, although it was "only a small opening":
20. On Saturday, 16 February 2019, Khemjira woke when Sanchai left for work at about 6:10am. Chatchaya was still asleep at this time and Khemjira went back to sleep.

21. At around 7:15am, Khemjira woke up when she heard a loud thump. She looked around but could not find Chatchaya. Khemjira observed the bedroom door was still closed and then noticed the window was opened wider. She looked out the window and saw that Chatchaya had fallen and was lying face up on the ground below.
22. Khemjira and Pattaporn rushed downstairs to tend to Chatchaya, which required Khemjira to climb over a fence to access the yard where Chatchaya lay.
23. Khemjira made a phone call to her husband. She also requested an Uber to take Chatchaya to the hospital. At 7:43am, Sanchai called for an ambulance, as it appears his command of English was better than his wife's.
24. Chatchaya was apparently still breathing and not visibly bleeding at this time. The Uber arrived but could not take the women without a child seat. The first police unit arrived on scene at 7:49am, by which time Pattaporn had driven Sanchai's car with Chatchaya and Khemjira in the backseat to the Royal Prince Alfred Hospital. Khemjira spoke with triple-zero at 7:50am and informed the operator that they were at the hospital. An ambulance arrived at 148 Bridge Road at approximately the same time.
25. Upon admission to the Emergency Department, Chatchaya received urgent medical care. Despite significant medical intervention, attempts to save her life were unsuccessful.

Investigation

26. At around 8:15am, Detective Senior Constable Walkling and Senior Constable Riley were informed through a referral from NSW Ambulance that a baby had fallen from the window of an apartment building and were requested to attend the scene.
27. At around 8:37am, they attended 148 Bridge Road, Glebe. Detective Senior Constable Walkling estimated that the window to the Unit (on the third floor) was five to ten metres above ground level.
28. The window was not fitted with any safety mechanism to ensure it could be locked in a partially open position. The window did not have any lock at all and did not automatically fasten shut when closed, although it could be made to do so. It was fitted with a

flyscreen, which appears to have given way and fallen to the ground, as it was found by police at the site where Chatchaya fell.

Window safety regulation in NSW

29. There is no requirement for the windows in company title buildings to be fitted with locks or any other child safety devices. Had this been a building subject to strata title, locks would have been required on the windows.
30. Around 2011, there had been a spate of accidents involving children falling from apartment windows and balconies. The Westmead Children's Hospital convened the *Working Party for the Prevention of Children Falling from Residential Buildings*. The Working Party's Outcomes Report, published in 2011,¹ provided a comprehensive examination of accidents involving children falling from windows at that time, identifying a number of salient public safety issues. The Report identified an alarming increase in the number of children accidentally falling from windows and balconies. There were 11 accidents involving children falling from windows in 2008, 17 in 2007 and 4 in 2006.
31. The Report identified a number of commonly occurring safety factors in window accidents involving children:
- (a) The child was left unattended in a bedroom by the parent;
 - (b) The child climbed onto furniture that had been placed near the window, and pushed an insect screen or opened the window;
 - (c) Fully or freely openable window and window insect screens provided a false sense of security;
 - (d) The child had been sitting on the window sill, looking out and losing balance;
 - (e) Furniture was often placed near or beneath windows due to a lack of sufficient room space to allow furniture to be positioned away from openable windows.

¹ Exhibit 1, Tab 24, p. 322

32. I note that those factors were all present in one way or another in the context of Chatchaya's fall.
33. The report made 16 recommendations, including for regulatory reform, awareness campaigns and improved data collection concerning such accidents.
34. Of particular note, the Report recommended the amendment in NSW of both the *Residential Tenancies Act 2010* and *Strata Schemes Management Act 1996*. The recommended amendments to the *Residential Tenancies Act* were to have the effect of requiring landlords to provide "window safety devices" on openable windows located above the ground floor in any rental tenancy.
35. In response to the Report, in 2013 the NSW Government passed legislation requiring the fitting of windows safety devices only in strata apartment windows above a certain height: *Strata Schemes Management Amendment (Child Window Safety Devices) Bill 2013*. A five-year period to May 2018 was allowed in which the locks could be fitted.
36. What constitutes a window safety device is set out at clause 30 of the *Strata Schemes Management Regulation* and, broadly, is a lock or other device (such as bars or grills) that can prevent a window being opened beyond a gap of 12.5cm.
37. It is not apparent why the NSW Government amended only the *Strata Schemes Management Act 1996* and not the *Residential Tenancies Act 2010* as recommended by the Report.
38. In 2013, changes were also introduced to the *National Construction Code* (incorporating the *Building Code of Australia*) to require safety devices for openable windows more than two meters above the ground in bedrooms of all new residential buildings (that is, those built from 2013 onwards)
39. There remains a hole in this patchwork of regulation, being apartment buildings built before 2013 that are not subject to strata title.
40. I pause to note here that free-standing houses, townhouses and terrace houses, among other types of residential dwellings built before 2013 are also not required to have child

window safety devices fitted to their windows. Those built after 2013 are only required under the *National Construction Code* to have applicable bedroom windows (only) above a certain height fitted with such devices.

41. More recently, as of 23 March 2020, s. 66(2A) of the *Residential Tenancies Act 2010* and cl. 22(g) of the *Residential Tenancies Regulation 2019* provide that a landlord must not unreasonably withhold consent for a tenant to install “window safety devices” for child safety. However, under those provisions, an onus is on the tenant to request such modifications. It is questionable whether all tenants would be aware of the potential risk, let alone the opportunity to install devices but at their own cost. Information about this risk is likely even harder to find for people from culturally and linguistically diverse backgrounds.

42. In 2013 the Department of Communities and Justice reported there were approximately 820 blocks of company title units in NSW and more than 71,000 strata schemes in NSW.

Accidents involving children falling from windows since 2013

43. Due to the COVID-19 pandemic, the Sydney Children’s Hospitals Network (SCHN) has been unable to provide complete data in respect of children presenting to hospital following falls from balconies or windows over the period from 2013 to April 2021.²

44. It is difficult to arrive at a picture of why falls continue to occur, based on the available limited data and evidence. The data provided by the SCHN does not record the type of building in which the fall occurred, such as a house or apartment building (although it notes that this will be captured in future), and it is certainly not possible to say how many of these falls occurred in non-strata apartment blocks.

45. Data obtained from the National Coronial Information System shows that there have been several other fatalities in New South Wales and Queensland where children have fallen through windows.³

² Exhibit 1 Tab 28A, p. 417

³ Exhibit 1 Tab 27 p. 416.

46. Two recent incidents of falls were reported by the media, late last year:

- i. On or around 9 August 2021, an infant boy was taken to Westmead Hospital in critical condition after falling from a window in his Baulkham Hills home;⁴ and
- ii. On or around 30 September 2021, a 6-year-old was reported as being in a critical condition falling a fall from a third-story window in a Marrickville apartment.⁵

Westmead Children’s Hospital

47. The Children’s Hospital at Westmead suggests the following steps could be taken to reduce the number of falls:

- (a) Education campaigns be revisited and run throughout the year;
- (b) Making window safety locks unremovable in bedrooms and lounges;
- (c) Recommending locks in other rooms, eg, kitchens;
- (d) Childproofing balconies.

48. The SCHN have pointed to a safety campaign initiated at the start of the COVID-19 pandemic about being extra vigilant about child safety during isolation, which resulted in a number of media stories and one of the hospital’s trauma surgeons appearing on radio station 2GB.⁶ The SCHN also notes that Kids Health have also historically undertaken education with preschools, community centres and other similar child-focussed organisations, which is ongoing.⁷

Minister for Better Regulation and Innovation

49. In his letter dated 9 December 2021, the former Minister for Better Regulation and Innovation stated that the provisions of the *National Construction Code* and *Strata Schemes Management Act 2015* are generally consistent, and that the latter is broader in

⁴ Exhibit 1 Tab 35, p. 470.

⁵ Exhibit 1 Tab 36, pp. 473–474.

⁶ Exhibit 1, Tab 34, p. 462

⁷ Exhibit 1, Tab 28A, p. 418

terms of its application because it is not limited only to bedroom windows.⁸ Instead, it applies to all windows within an apartment and any windows on common property to which access can be gained from a residence.

50. The Minister noted that company title corporations are established under the *Corporations Act 2001* (Commonwealth) and that accordingly, any recommendations should be in relation to building and planning laws to achieve a more universal application of the proposed requirements.

Department of Planning, Industry and Environment

51. In his letter dated 22 December 2021, the Group Deputy Secretary of Department of Planning, Industry and Environment, set out support of potential legislative change.⁹ He reflected upon the tragedy of Chatchaya's death and proposed to recommend to the incoming Minister that coronial recommendations regarding requirements for window safety devices to prevent further occurrences of incidents of this nature be supported. He considered that the planning legislative framework would be an appropriate mechanism to implement any recommendations.

52. The Group Deputy Secretary also proposed

“... consultation with the property industry and broader community be undertaken by the Department regarding potentially expanding the scope of the proposed measures beyond just residential apartments (Class 2 buildings) to incorporate all residential dwellings such as houses, townhouses or terraces (Class 1a buildings).”

53. Those classes of buildings are defined in the *National Construction Code*.

54. On the issue of the costs of implementing the change versus the benefits, the Group Deputy Secretary noted that, while there would be a modest cost involved, it would be similar to other government education campaigns, for example, smoke alarms, swimming pool fencing and combustible external cladding.

⁸ Exhibit 1, Tab 33B, p. 460

⁹ Exhibit 1, Tab 29B, p. 433

55. With respect to enforcement, he suggested that a penalty notice provision could be introduced into the Environmental Planning and Assessment legislation similar to the scheme governing the installation of smoke alarms
56. He recommended that any new requirements be implemented in relatively short order, namely within a period of twelve months after commencement of any amendments. In his view, this time frame would be sufficient for owners to obtain and install appropriate “window safety devices”, noting that window locks are readily available from any hardware store and do not require specialist installers.

Conclusion

57. The facts of this inquest point to a discrepancy between requirements for window safety devices in windows strata-title apartment buildings and those in non-strata apartment buildings. There does not appear to be any sound reason why such a discrepancy should continue to exist, and it should be addressed.
58. Had a window lock been installed on this window, Chatchaya would not have fallen to her death. The life-saving potential of window locks has been recognised by amendments to the *Strata Schemes Management Act* and the *National Construction Code*. I am of the opinion that amendments should be made to the relevant legislation to ensure that this discrepancy no longer exists.
59. While a recommendation in relation to that discrepancy deals with windows in company title apartment buildings, it does not address the position with respect to other residential buildings, including houses and townhouses, built before 2013, or the fact that the *Building Code of Australia* requires window safety devices to be installed only in bedroom windows of residential properties built after 2013. Accordingly, I also propose to make a recommendation that the Department of Planning, Industry and Environment undertake the further consultation proposed by the Group Deputy Secretary of the DPIE in his letter dated 22 December 2021.¹⁰ That consultation will consider the advantage of

¹⁰ Exhibit 1 Tab 29B, p 433

expanding the scope of the requirement for the installation of child window safety devices from residential apartments to all residential buildings.

Findings s. 81 Coroners Act 2009

60. I find that Chatchaya ITTIVEITHCHAI died on 16 February 2019 at Prince Alfred Hospital, NSW as a result of a blunt force injury of the head she sustained when she fell from a third-floor window which did not have a safety lock.

Recommendations s. 82 Coroners Act 2009

To the Minister for Planning and Homes and to the Minister for Fair Trading

I recommend that amendments be made to the *Environmental Planning and Assessment Act 1979 (NSW)* and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2000 (NSW)* (and/or any other legislation considered appropriate) to ensure that child window safety devices (as defined in cl. 30 of the *Strata Schemes Management Regulation 2016 (NSW)*) are required to be installed in all Class 2 buildings (as defined in the *Building Code of Australia*).

To the Minister for the Department of Planning, Industry and Environment

I recommend that there be consultation with the property industry and broader community by the Department of Planning, Industry and Environment regarding expanding the scope of the requirement for the installation of child window safety devices from residential apartments (Class 2 buildings as defined in the *National Construction Code*) to incorporate all residential dwellings such as houses, townhouses or terraces (Class 1a buildings as defined in the *National Construction Code*).

Magistrate C Forbes
Deputy State Coroner
7 February 2022