



Regulatory Impact Statement - Control of Weapons Regulations 2021

Department of Justice and Community Safety

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Glossary

Acronym	Full name
ABS	Australian Bureau of Statistics
the Act	<i>Control of Weapons Act 1990</i>
the Regulations	Control of Weapons Regulations
DJCS	Department of Justice and Community Safety
weapons	non-firearm weapons
MCA	Multi-Criteria Analysis
the Regulations	Control of Weapons Regulations 2011
RIS	Regulatory Impact Statement
ABN	Australian Business Number
ACN	Australian Company Number
ARBN	Australian Registered Body Number

Executive Summary

Purpose of this Regulatory Impact Statement (RIS)

The purpose of this RIS is to review the effectiveness and impacts of the Control of Weapons Regulations 2011 (the Regulations), assess feasible options for changes to the Regulations, and set out a preferred set of new Regulations. The Regulations prescribe matters for the purposes of the *Control of Weapons Act 1990* (the Act) and sunset on 29 November 2021.

This RIS and accompanying exposure draft Regulations only relate to non-firearms weapons (weapons hereafter). Firearms are separately regulated under the *Firearms Act 1996* and the Firearms Regulations 2018 and are not within the scope of this review. Imitation firearms are within the scope of this review as they are classed as weapons not as firearms.

Problem statement

The problems that these Regulations are intended to address are:

- public access to weapons increases the risk of weapons related harm (both intentional and unintentional)
- a lack of regulation may increase frequency and severity of harm, and
- the misuse of weapons creates significant social and economic costs.

Scope of the RIS

The heads of power in the Act allow for regulations to be made that refine or add to the requirements of the Act, including:

- prescribe what items are body armour
- prescribe specific articles as a certain class of weapon (e.g. controlled weapon or prohibited weapon), triggering specific regulatory controls under the Act
- set fees for an approval to lawfully use prohibited weapons
- prescribe requirements for record-keeping and identification in transactions of prohibited weapons
- prescribe record keeping requirements for police and protective services officers exercising powers under the Act.

For example, prohibited weapons are defined in the Act as an imitation firearm, with additional weapons prescribed in regulation. Prohibited weapons may only be sold or used with an approval by the Chief Commissioner of Police or by exemption order made by the Governor in Council and published in the Government Gazette.

By comparison, controlled weapons are defined in the Act as knives, with a small number of additional weapons prescribed in regulation. Controlled weapons are subject to a number of restrictions (e.g. they may only be possessed, carried, used or sold with a lawful excuse, must be carried in a safe and secure manner and cannot be sold to, or purchased by, children aged under 18 years of age), but do not require a Chief Commissioner approval or exemption order in order to be used legally.

Summary of options considered

This RIS identifies options for alternative approaches to addressing the problems, each of which are later assessed against the Base Case: a counter-factual scenario used in impact analysis to provide a common point of comparison for all options. In this RIS, the Base Case represents a situation where the current Regulations for the control of weapons sunset on 29 November 2021, with no new approach to address the problem established.

Options identified and assessed in this RIS include:

- a negative licensing scheme
- an industry-led code of conduct
- a regulatory approach, based on the remaking the current Regulations with minor refinements.

1.1.1.1 Option 1 – negative licensing scheme

This option involves implementing a scheme whereby no weapons are prohibited, but where a person who breaches the Regulations or commits relevant offences could be prohibited from using or gaining access to weapons. Introducing this option would require setting out the requirements and/or standards that, if breached, could result in a person being issued with a negative licence, along with the conditions that a negative licence would impose (such as duration of ban and/or the actions that could be taken by the person for the ban to be revoked)

1.1.1.2 Option 2 – industry-led code of conduct with government enforcement

Under Option 2, industry would develop and administer its own code of conduct or control scheme for weapons in consultation with the government. This would involve agreeing upon a list of prescribed weapons, record keeping requirements and fee structures. Industry would be the sole or primary administrator of measures to mitigate risks. The government would then provide legislative backing to allow the industry arrangements to be enforced. In doing so, the government may offer to investigate or enforce non-compliance or delegate this power to industry.

1.1.1.3 Option 3 – regulatory approach

Option 3 uses a regulatory approach to the control of weapons, within the constraints of the Act.

This involves remaking the Regulations, with the following minor adjustments (outlined in section 3.2.2):

- redefining body armour to better reflect how the framework is currently administered
- a minor extension to record-keeping requirements for sellers of prohibited weapons
- expand the list of valid documents to prove one’s identity to a seller of a prohibited weapon and
- updating police record search requirements to clarify their alignment with powers under the Act.¹

This RIS reflects a range of views provided by industry stakeholders through a consultation process. Although several suggested changes to the regulatory framework raised by stakeholders cannot be implemented through the Regulations and are thus outside the scope of this RIS for the purposes of detailed analysis, they are nonetheless noted in this RIS in the interests of providing a clear and complete consultation document.

Assessment of options

The options in this RIS are assessed using Multi-Criteria Analysis (MCA) to score each of these approaches against the following criteria:

- benefits including:
 - the reduction in deliberate or accidental weapon-related harm and public distress.
- cost including:
 - cost of enforcement and compliance
 - discouragement of legitimate use.

The results of the MCA show that the regulatory approach is the preferred option. Compared to the Base Case and the other options, it is the most effective at reducing deliberate or accidental weapon-related harm and public distress. It draws on the expertise of Victoria Police in identifying weapons that pose risks to society and has the advantages of a publicly declared, government-backed list of prescribed weapons and requirements, without imposing disproportionate costs to industry (in terms of compliance) or government (in terms of administering and enforcing the regulatory framework).

¹ The proposed Regulations clarify a small number of particulars that a police officer or protective services officer must include in a record of a search carried out under the Act to reflect the rules for searches set out in Schedule 1 of the Act (for example, where Schedule 1 of the Act requires that a parent, guardian or independent person be present during the search of a child, the proposed Regulations clarify that a police officer or protective services officer must record the name of the parent, guardian or independent person).

Impact of preferred option (regulation)

The impact of the proposed Regulations on stakeholders is estimated by the regulatory burden imposed on those lawfully using weapons by requiring them to apply for approvals or be subject to conditions under exemptions to use, possess, carry or sell prohibited weapons as well as meet compliance requirements (such as record-keeping in the case of weapons retailers).

This analysis is based on available data about the legitimate use of weapons and transparent and credible assumptions that have been informed by stakeholder consultation.

This RIS estimates that the total impact of the proposed Regulations on stakeholders is \$1.2 million per year, compared to a base case in which no Regulations were remade. This includes the estimated cost of fees charged for approvals. While the Base Case is the relevant technical point of comparison in impact analysis, the *incremental* difference in impact between the status quo and the proposed Regulations (due to additional record-keeping requirements) is estimated to be \$146,851 per year.

The impact analysis in Chapter 5 concludes that the proposed Regulations are expected to yield net benefits for society on the basis of breakeven analysis. Breakeven analysis is used because the benefits of the proposed Regulations are harder to determine with confidence or accuracy than the costs. Given the current net present value of a statistical life of around \$4.6 million, and the ten year net present value of the estimate costs of the proposed Regulations of around \$8.9 million, the proposed Regulations would “break even” and yield a net social benefit provided that they reduce weapons-related deaths by just two over a period of ten years.

Small business and competition impacts

The proposed Regulations are not expected to have adverse impacts on competition and any disproportionate impacts on smaller businesses are expected to be minimal given the marginal impact the requirements have on small businesses as a whole.

Implementation, evaluation, and enforcement

Victoria Police will support implementation of the proposed Regulations through proactive communication with stakeholders as part of their ongoing industry engagement (including building and maintaining relationships with organisations that use weapons for legitimate purposes). This includes advising stakeholders of the changes to the Regulations.

Victoria Police will continue to enforce the regulatory framework through their role in auditing approval/exemption holders, encouraging compliance and continuing their current enforcement and monitoring practices. Given the relatively minor changes proposed for the Regulations, no material changes to existing enforcement and evaluation arrangements are proposed. The success of the proposed Regulations can be evaluated based on measures relating to trends in weapons related crime and harm.

Public consultation

DJCS welcomes feedback from all interested members of the public on this RIS and any matters they feel would improve the proposed Regulations. The proposed Regulations are not final, and improvements or changes may be made in response to public comment.

All comments and submissions will be treated as public documents unless requested to be made confidential. Submissions must not include the personal information of another individual without first obtaining the prior written consent of that individual.

1 Background

This chapter provides background in relation to the control of weapons and outlines the purpose of this RIS.

1.1 Purpose of this Regulatory Impact Statement (RIS)

The purpose of this RIS is to review the effectiveness and impacts of the Control of Weapons Regulations 2011 (the Regulations), assess feasible options for changes to the Regulations and provide a preferred option for the proposed Control of Weapons Regulations 2021.

The Regulations are made under the *Control of Weapons Act 1990* (the Act) and sunset on 29 November 2021. The Act promotes community safety and minimises potential harm from misuse (intentional or otherwise) of non-firearm weapons (weapons hereafter). It does so by restricting the sale, possession, carriage and/or use of a limited number of weapons.

The Regulations prescribe matters for the purposes of the *Control of Weapons Act 1990* (the Act). For example, the Regulations:

- prescribe what items are body armour
- prescribe specific articles as a certain class of weapon (e.g. controlled weapon or prohibited weapon), triggering specific regulatory controls under the Act
- set fees for Chief Commissioner approvals to lawfully use prohibited weapons
- prescribe requirements for record-keeping and identification in transactions of prohibited weapons, and
- prescribe record keeping requirements for police and protective services officers exercising powers under the Act.

If the Regulations were to sunset without being replaced, the regulatory framework would not operate effectively as the large list of weapons the Regulations prescribe would not be adequately controlled. Inadequate control of these weapons would certainly lead to an increase in the harm they cause to the community as they become more accessible to those who might misuse them. The implications of not having any Regulations include increased risks to the community or to the reputation of stakeholders in the sector.

This RIS and accompanying exposure draft Regulations only relate to weapons which are not firearms. Firearms are separately regulated under the *Firearms Act 1996* and the Firearms Regulations 2018 and are not within the scope of this review. Imitation firearms are within the scope of this review as they are classed as weapons not as firearms.

1.2 The control of weapons

1.2.1 What are weapons?

A weapon can be any object that might cause harm, intentionally or otherwise. Examples of weapons include knives, swords, martial arts weapons, batons and imitation firearms. Body armour is also regulated by the Act. The Act organises weapons into four categories, each with corresponding regulatory restrictions (Table 1.2).

1.2.2 What are the uses of weapons?

The uses of weapons are wide and varied and can be either legitimate or unlawful. Legitimate purposes for using weapons largely pertain to uses that are occupational, recreational, cultural or religious.

The legitimate and responsible use of weapons for these purposes is worthwhile and valuable to society, whether in the support of business activity, providing recreational benefits, or contributing to and maintaining the traditions and culture of Victorians. Examples of each of these legitimate uses are shown in the table below.

Table 1.1 Types and examples of legitimate use of weapons

Type of legitimate use	Example
Occupational	<ul style="list-style-type: none"> • Martial arts trainers using swords • Law enforcement officers using capsicum spray • Use of weapons in film, television, and theatre
Recreational	<ul style="list-style-type: none"> • Sport (e.g. fencing, modern pentathlon) • Historical re-enactment • Militaristic mock combat games • Weapons collecting • Live action role-playing (larping)
Cultural or religious	<ul style="list-style-type: none"> • Sgian-dubhs as part of ceremonial or traditional Scottish Highland dress • Sikh community members using ceremonial kirpan daggers

Notwithstanding the many legitimate uses of weapons (and the fact that most Victorians who use weapons do so safely, responsibly, and in accordance with the law) the risks posed by deliberate or accidental misuse of weapons persist (see Chapter 2 for more detail).

1.3 Legislative framework

1.3.1 Legislative framework in Victoria

The Act mitigates the risks of harm posed by weapons by restricting who may access weapons and the circumstances in which they are acquired and used. The Act defines four categories of weapon, each with corresponding regulatory restrictions as outlined in the table below.

Table 1.2 Categories of weapons defined in the *Control of Weapons Act (1990)* and corresponding regulatory restrictions

Category of weapon	Definition and example	Regulatory restrictions
Prohibited weapon	<p>Prescribed items considered inappropriate for general possession.</p> <p>Examples include imitation firearms, swords, crossbows, daggers, martial arts weapons, and certain knives.</p>	<p>Cannot be used, purchased, brought into Victoria, manufactured or carried unless the person has an exemption from the Governor in Council or an approval from the Chief Commissioner of Police.</p>
Controlled weapon	<p>Prescribed items that can be possessed, carried and used for legitimate purposes but may pose a danger to the community.</p> <p>Examples include knives, spear guns, batons, bayonets, and cattle prods.</p>	<p>Can only be possessed, carried, used or sold with a lawful excuse. Controlled weapons must be carried in a safe and secure manner and cannot be sold to, or purchased by, children aged under 18 years of age.</p>
Dangerous article	<p>Any article which is carried with the intention of being used as a weapon or adapted so as to be capable of being used as a weapon.</p> <p>This may include everyday items including tools, household items or sports equipment.</p>	<p>Can only be possessed or carried in a public place or licensed premises with a lawful excuse.</p>

Category of weapon	Definition and example	Regulatory restrictions
Body armour	A prescribed garment or item that is designed, intended or adapted for the purpose of protecting the body from the effects of a firearm.	Regulated in a similar manner to prohibited weapons.

The Act defines imitation firearms as prohibited weapons, and knives (other than knives that are prohibited weapons) as controlled weapons, and allows for the prescription of additional specific items. This prescriptive approach to regulation (as opposed to an outcomes-based approach which sets out rules or conditions that apply instead based on the broader risks or outcomes that can arise from the misuse of weapons) helps clarify and simplify the understanding of which weapons are subject to the restrictions, both for those affected by them and for those enforcing them.

To facilitate this prescriptive approach to mitigating risk, section 12 of the Act outlines the powers of the Governor in Council to make Regulations that prescribe additional weapons or body armour to the above categories (thereby identifying and providing clarity regarding other weapons that should belong to the above categories).

As noted in the table above, the Act also provides for individuals to transact and/or use weapons for legitimate purposes. In the case of a controlled weapon it requires a lawful excuse (e.g. a chef using knives for the purposes of employment, or the use of props in a theatre performance). In the case of prohibited weapons, the buyer, seller and/or user of a weapon requires either an exemption from the Governor in Council or approval from the Chief Commissioner of Police.

The Regulations support the proper and efficient administration of the legislative framework in relation to the approved use of prohibited weapons and cover matters including:

- requirements for purchase/sale of prohibited weapons being
 - personal identification details to be provided by the purchaser
 - the form in which a record of sale must be kept by the seller
 - the details of the sale to be recorded by the seller, and
- fees for applications for approval to use prohibited weapons.

The Regulations also prescribe record keeping requirements for police officers and protective services officers exercising search powers under the Act.

All other Australian jurisdictions (and the vast majority of other countries) have weapons control schemes of one form or another aimed at reducing the risk of harm from misuse. There are, however, a range of different rules and approaches used in other jurisdictions.

For example, the Act allows for an exemption to be applied to classes of persons or to a corrections officer, military officer or member of police personnel by name or description of office and approvals to be granted to individuals. By way of comparison, the Weapons Act 1990 of Queensland allows organisations to lawfully use restricted weapons, provided that they obtain a group licence (based on eligibility requirements and conditions outlined in regulation).

In NSW the Weapons Prohibition Act 1998 and the corresponding Weapons Prohibition Regulations 2017 established a 'permit' system notably more detailed as compared with Victorian legislation. (The Victorian system instead confers broad discretions on the Governor in Council and the Chief Commissioner of Police to impose conditions on exemptions or approvals given under the Act.) In NSW there are numerous variations of permits each pertaining to particular activities. NSW legislation also requires training and safety courses to be completed in order to acquire certain permits.

1.4 Preparation of the RIS

The key purpose of this RIS is to assess the impact of different options for replacing the sunset Control of Weapons Regulations. The general approach to the assessment is as follows:

(1) Identification of the problem

This involved consideration of the nature and extent of the problem that the proposed Regulations aim to address, including the need for government intervention, the risks of non-intervention and the objectives of such intervention.

(2) Identification of the options to achieve the objectives of the proposed Regulations

The proposed Regulations and alternative options were developed by government and informed by pre-RIS consultation (see Chapter 3 for examples of issues raised in consultation undertaken). The establishment of options allowed possible costs and benefits to be examined as part of the stakeholder consultation.

(3) Stakeholder consultations

Targeted pre-RIS stakeholder consultation was undertaken by Deloitte and DJCS to gather relevant information on the impact of the existing and proposed Regulations and possible impacts for different groups of stakeholders.

(4) Assessment of the costs and benefits

Consistent with the requirements of the *Victorian Guide to Regulation*, an assessment of the costs and benefits under all options, relative to a reference case (the Base Case) was undertaken. The analysis included the quantification, where possible, of benefits to industry, government, and the Victorian community.

(5) Assessment of the other impacts

We have considered the likely impacts of the preferred option on industry competition and small businesses. This part of the RIS draws on stakeholder consultations.

(6) Implementation and evaluation

This chapter describes the arrangements for implementation and evaluation of the preferred option.

As such, the report is structured as follows, which is consistent with the *Victorian Guide to Regulation*:

- Chapter 1 - Background
- Chapter 2 – Problem statement
- Chapter 3 – Options development
- Chapter 4 – Options analysis and preferred option
- Chapter 5 - Fees
- Chapter 6 – Impact on competition and small business
- Chapter 7– Implementation and evaluation
- Appendix A – Detailed options analysis
- Appendix B – Stakeholder engagement
- Appendix C - Cross jurisdictional analysis

In addition, relevant to all components is an overriding requirement that the depth of analysis must be commensurate with the magnitude of the problem and with the size of the potential impact of the proposal.

1.4.1 Public comment

This RIS and the proposed Regulations have been publicly released for consultation to provide businesses, members of the public and other interested parties the opportunity to provide feedback through a formal submission process.

1.4.2 Addressing public comment

The Minister will consider all submissions received during the period of public review. The Minister will prepare a Statement of Reasons summarising the submissions received and their response. Submissions on this RIS and draft Regulations, and the Statement of Reasons, will also be made available.

2 Problem statement

This chapter outlines the nature and scale of the problem the Regulations seek to address, and the expectation that these problems would worsen in the absence of any regulation.

2.1 Potential misuse of weapons poses risks to community safety

Misuse of weapons can occur for a wide range of reasons, ranging from the accidental mishandling of a weapon to deliberate misuse associated with criminal activities. Regardless of intent, the misuse of weapons can increase the risk of injury and crime. These risks pose a threat to the safety of the community which can be mitigated by regulating access to weapons without unduly restricting their legitimate use or imposing prohibitive costs on potential users.

If this risk is realised, the consequences of misuse are serious and extend beyond individual victims to families and members of the broader community.

- **Individuals:** an individual victim may suffer physical pain and suffering, disfigurement, disability and in extreme cases, death.
- **Families:** family and friends of the victim are likely to experience mental suffering associated with the harm or death of their family member.
- **Community:** the wider community is likely to experience heightened insecurity and distress regarding general safety.

2.1.1 Public access to weapons increases the risk of harm

The level of risk to our community is related to weapon accessibility. By nature, increased access to weapons increases opportunity for them to be used in an unsafe manner. Research has established that – as is the case with firearms – there is a causal “relationship between offending behaviour and... the possession of weapons”.²

In recent years, there has been continuing public demand for weapons for legitimate use, with an average of 313 applications for approvals considered by the Chief Commissioner of Police each year from 2015-16 to 2019-20. The combination of the demand for (and access to) weapons contributes to the prevalence of weapons within the community and their potential misuse. Stakeholder feedback suggests that the use of weapons without exemption or approval also persists (particularly in cases where those using weapons are unaware of the specific weapons that are restricted and/or their legitimate uses).

2.1.1.1 Trends in offences using prohibited and controlled weapons

Recorded offences involving use of prohibited and controlled weapons “without an exemption or approval or excuse” (the formal definition of the relevant offence) can be used as a proxy to estimate the prevalence of weapons usage in the community. On average over the past decade, ABS data show that controlled weapons are used without an excuse over 100 times annually (Chart 2.1). For prohibited weapons, usage without an exemption or approval occurs 33 times yearly. By definition, these statistics do not reflect instances where unlawful weapons use is not detected, and therefore it is likely that the actual use of weapons without an excuse or exemption/approval is significantly higher. This demonstrates the need for appropriate mechanisms to police

² Felson, M & Clarke, R (1998) ‘Opportunity Makes the Thief: Practical theory for crime prevention’, Policing and Reducing Crime Unit – Research, Development and Statistics Directorate, Policy Research Series, Paper 98.

Stolzenberg, L & D'alessio, S.J (2000) ‘Gun availability and violent crime: New evidence from the national incident-based reporting system’, *Social Forces*, 78(4), 1461-1482.

Anglemyer, A, Horvath, T & Rutherford, G (2014) ‘The accessibility of firearms and risk for suicide and homicide victimization among household members: a systematic review and meta-analysis’, *Annals of internal medicine*, 160(2), 101-110.

Bartels, L (2011) ‘Knife crime: recent data on carriage and use. Trends & issues in crime and criminal justice no. 417. Australian Institute of Criminology

the usage of weapons, without which harm may have occurred in these instances. To the extent that regulation and enforcement also creates a deterrent effect, in the absence of the current Regulations the use of prohibited and controlled weapons would likely have been at least marginally higher.

Chart 2.1 Use of prohibited and controlled weapons without an exemption or approval or excuse in Victoria, 2011-2020



Source: Crime

Statistics Agency, 2020

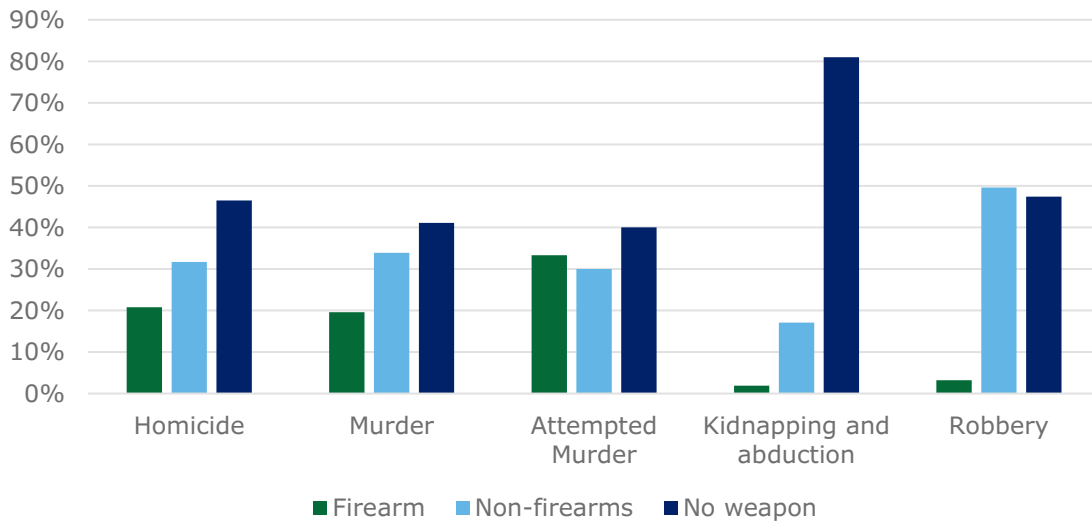
2.1.1.2 Trends in weapons-related crime

Nationally, the number of homicides and related offences rose 10 per cent from 2018 to 2019.³ The most common weapon used in these offences was a knife (46%). In Victoria in 2019, 34 per cent of murders were committed using weapons including knives (Chart 2.2). These statistics also illustrate that if an item is used in an offence in Victoria, it is most likely to be a weapon regulated under the Act and Regulations rather than a firearm. In the absence of the current regulatory framework, it would be easier and less risky for individuals to obtain these weapons, and it is reasonable to assume that there would as a result be a larger number of offences involving these weapons that result in significant harms to individuals, their families and the community.

Although the vast majority of Victorian weapon users comply with their responsibilities under the Act, and do not engage in unsafe or criminal activity, the risks and high consequences associated with the unsafe use of weapons requires appropriate controls on access to weapons, and the circumstances in which they are acquired and used. Restricting access to weapons therefore restricts opportunity for misuse and this provides protection to the community because accidental or intentional misuse involving a weapon could not occur in the absence of a weapon. In cases where individuals deliberately or accidentally cause harm to themselves or others, the severity of the harm they are able to cause will be reduced in the absence of a weapon.

³ Australian Bureau of Statistics, 2019

Chart 2.2 Use of weapons in the commission of select offences in Victoria, by percentage, 2019



Note: Non-firearms include any instrument other than a firearm or substance (e.g. liquids) capable of inflicting damage, injury, or death and used in the commission of a crime. This includes weapons used or seen but not further defined. Homicide and murder are separate offences because homicide refers to the killing of a person, while murder refers to the killing of a person with malicious intent.
 Source: Australian Bureau of Statistics, Catalogue 4510.0 Recorded Crime, 2019

2.1.2 A lack of regulation may increase the frequency and severity of harm

As discussed in Chapter 1, Victoria currently uses a legislative approach to manage access to weapons, thereby decreasing the risks of crime and injury due to misuse. DJCS and Victoria Police note that this is complemented by other interventions aimed at reducing the likelihood of deliberate misuse of weapons, including crime prevention activities and campaigns, such as anti-extremist programs.

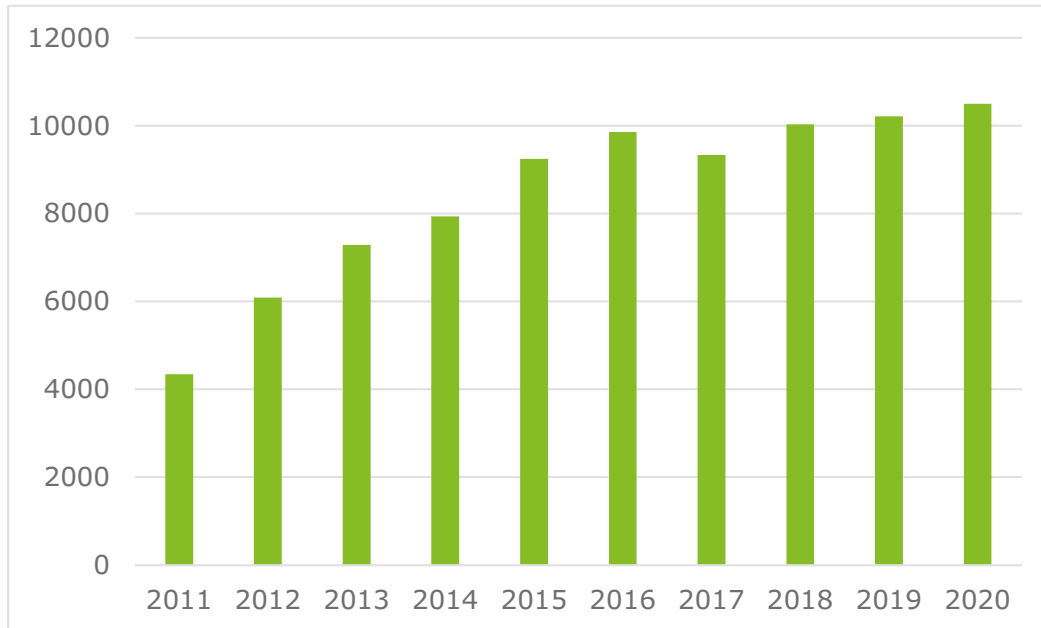
In line with research into access to weapons noted above, increased access to weapons due to reduced control of weapons will mean that crimes of opportunity using those weapons are more likely to occur, and that criminal activity that would already be undertaken is more likely to use a weapon and so incur more severe harm.

The Regulations target the availability of and access to these weapons as a simpler and more enforceable point of intervention to address the underlying risk of harm. These Regulations are set to sunset on 29 November 2021. In the absence of new Regulations, the Act’s regulatory controls would only apply to the items prescribed in the Act itself including dangerous articles, knives, and imitation firearms. All other items prescribed by the Regulations as body armour, controlled weapons or prohibited weapons would cease to be regulated.

In the years following the introduction of the Regulations in 2011, the annual number of weapons offences increased from around 4,000 to almost 10,000 in 2016 (Chart 2.3).⁴ However, after 2016 the number of yearly weapons offences stabilised at around 10,000.

⁴ While this is likely due at least in part to a subsequent increase in enforcement activity which captured more weapons offences, the stabilisation of steadily increasing trend is consistent with underlying growth in prohibited uses or activities.

Chart 2.3 Total number of weapons offences committed in Victoria, 2011-2020



Source: Crime Statistics Agency, Recorded Offences (2020)

Unrestricted access to weapons increases the risk of unintentional and intentional harm being inflicted upon individuals. It is likely that incidents of weapons-based harm would be more frequent and severe in Victoria in the absence of any form of regulation.

2.2 The misuse of weapons carries social and economic costs

There are numerous social and economic costs associated with the misuse or illegal use, of weapons:

- injury and/or loss of life sustained by victims of weapons
- individual economic and health costs associated with any injuries/loss of life (injury, pain, suffering, medical expenses, loss of employment)
- distress or public alarm due to the threat of violence using weapons, particularly imitation firearms
- economic cost for governments (police action, investigation, judicial processes, incarceration) and
- economic and social costs for community (fear of crime, avoidance of certain social and economic activities, security costs).

There are also costs imposed on the wider Victorian community. Increased cases of injury caused by weapons leads to higher rates of hospitalisation, increased demand for ambulance services and a general strain on the healthcare system. Increased crime related to weapons misuse also imposes costs on the Victorian law enforcement and legal system. There are costs related to policing and investigation, legal representation, court administration and criminal sanctions. Injury caused by weapons misuse also reduces productivity: individuals incapacitated due to injury face time losses on employment, domestic activity, voluntary work and caregiving.

The burden of these costs on society is significant. The previously mentioned risks and costs occur even with the Regulations. In the absence of the Regulations, these risks and costs would increase. The estimated cost of weapons-related crime in Victoria was \$281 million per annum based on 2019 data.⁵ By contrast, the estimated impacts of the Regulations amount to \$1,143,279 per annum in compliance costs and up to an additional \$63,500 in fees charge for applications for approval or use a prohibited weapon, with a total estimated impact of \$1er

⁵ Estimate based on relevant literature on the social costs of different types of crimes. The role of non-firearms weapons in these crimes has been used to derive an overall estimate of the costs of weapons-related crime. ABS data has been used on the frequency of reported instances of different types of crimes involving weapons.

sets out the approach used in this RIS to assess broad options for Victoria's approach to controlling weapons, before analysing the impacts of specific changes to the Regulations in Chapter 4.

2.3 Objectives

The objective of regulation under the Act is to protect community safety and to mitigate the risk of prescribed items being used to commit crimes or used in an unsafe manner that could cause people harm. The regulation of body armour supports this same objective by preventing criminals from using body armour to protect themselves when perpetrating crimes, which would result in escalation of force by police (who would need to use more extreme measures to combat the armoured offenders) and/or reduce the operational effectiveness of police in general.

Therefore, the proposed regulatory approaches considered within this RIS aim to:

- improve community safety and perceived safety,
- reduce the social and economic costs associated with the misuse of weapons outlined in 2.2 above, and
- minimise burden on legitimate use of controlled weapons.

2.4 Approach to options development

As part of the RIS process, it is necessary to consider different possible options available to achieve the Victorian Government's objectives. The *Subordinate Legislation Act 1994*, the Subordinate Legislation Act 1994 Guidelines,⁶ and the *Victorian Guide to Regulation* recommend that this include considering a range of approaches, including co-regulation and non-regulatory options, and those that reduce the burden imposed on business and/or the community.

2.4.1 Feasible options within the scope of the regulation-making powers of the Act

The Act does not provide sufficient Regulation-making powers for this RIS to consider widespread changes to the regulatory approach adopted in the Regulations. Nevertheless, in keeping with the intent of the sunseting process, and to outline for stakeholders the underlying rationale for preferring a regulatory approach, the analysis of options in this RIS reviews the relative merits of the current regulatory framework compared to alternative approaches to managing the risks posed by weapons.

These options have been informed by the consultation process, in which several stakeholders provided useful insights into and examples of alternative regulatory arrangements which, while not feasible within the constraints of the Act, warrant noting here.

The options identified below and their analysis in Chapter 4 are included here to outline for stakeholders the effectiveness of the current regulatory regime and the rationale for continuing with a regulatory approach, subject to any beneficial variations to the status quo. They are not intended to suggest that options such as no regulation, relying solely on information campaigns or requiring industry to lead the regulatory effort, are being contemplated by Government.

The provisions in the Act allow for regulations to be made that prescribe matters for the purposes of the Act, including, for example:

- what items are body armour
- specific articles as a certain class of weapon (e.g. controlled weapon or prohibited weapon), triggering specific regulatory controls under the Act
- fees for approvals to lawfully use prohibited weapons
- requirements for record keeping and identification in transactions of prohibited weapons, and
- record keeping requirements for police and protective services officers exercising powers under the Act.

⁶ Victoria Government Gazette No. G.2 on 16 January 2020 at page 68.

2.4.2 Variations between the status quo and the proposed Regulations

Stakeholder consultation (including with those affected by the Regulations and with Victoria Police) uncovered no specific proposed changes to the lists of prescribed or controlled weapons in the current Regulations. Stakeholders noted that a nationally harmonised set of prohibited or controlled weapons would be beneficial. While the Regulations could be amended to align with any national list of prescribed items, this would first require a commitment and consensus between jurisdictions to align their weapons control schemes.

Several stakeholders provided feedback on their experience with police when searched or spoken to in the course of police verifying the legitimacy of their use of weapons prohibited or controlled by the Regulations. None proposed any need for additional requirements to be imposed on police or protective services officers when exercising powers under the Act.

A number of suggested improvements regarding the way the framework was administered or operated were proposed, but these were all outside the scope, or did not propose to use the regulation-making powers, of the Act.

Suggestions included, for example:

- more engagement and explanation from police about the relative risks posed by different weapons prescribed as either prohibited or controlled weapons (e.g. communications material outlining the principles upon which decisions to prescribe specific weapons had been made, to help stakeholders understand the rationale and, in the case of larger organisations, explain it to their members or customers)
- greater consistency in the prescription of weapons (e.g. examples where one weapon was prescribed as prohibited and another as controlled. One stakeholder felt that the different prescriptions were inconsistent, but did not propose a preferred prescription)
- further exemptions made for specific organisations to use prohibited weapons (noting that this is beyond the regulation-making powers outlined in the Act, as such exemptions are made by gazettal)
- amendments to existing exemptions made by previously gazetted decision (e.g. the removal of the cooling off period for the purchase of swords), and
- assurances that imitation handguns would continue to be regulated under this regulatory framework and not through the *Firearms Act 1996* and its accompanying subordinate legislative instruments.

One stakeholder queried the importance of recording the time of sale for imitation firearms, but did not regard the need to do so as posing a cost of any significance.

Some stakeholders noted that while they had no specific suggested changes to the items prescribed by the Regulations or the record-keeping requirements, there would be benefit in ensuring police and protective services officers were fully trained in the specifics of the regulatory framework to avoid otherwise avoidable situations in which stakeholders were delayed or detained until the legitimacy of their used could be verified. This is not something that can be affected by changing the Regulations, but is noted in the Chapter 7 of this RIS.

Stakeholders indicated no preference for specific changes to the items prescribed in Regulations beyond noting that, ideally, prescribed items would align with other jurisdictions. Any potential harmonisation is a policy decision to be made jointly with other jurisdictions. In the event that such a policy decision is made, the Regulations would be able to be amended to reflect a new, nationally harmonised list of prohibited and controlled weapons.

These suggestions have been conveyed to DJCS through the pre-RIS consultation process.

A small number of minor adjustments to the status quo have been identified for the proposed Regulations, aimed at better reflecting the way the framework is administered in practice and streamlining implementation and enforcement.

Among these adjustments are:

- redefining body armour to explicitly exclude a helmet or article used to protect the face, eyes or ears, (to increase consistency with other jurisdictions and better reflect how the framework is currently administered)

- requiring sellers of prohibited weapons to record the ABN/ACN/ARBN/IAN (as applicable) of the purchaser of a prohibited weapon (which is already done as standard practice in many cases, but is not currently a regulatory requirement)
- expanding the list of valid documents to prove one's identity to a seller of a prohibited weapon (prescribed for the purposes of section 5A(1) of the Act) and
- updating police record search requirements to clarify their alignment with powers under the Act.⁷

2.4.2.1 Limited benefits of increasing regulatory requirements

The main benefits of the Regulations (see Chapter 4) derive from their effectiveness in preventing illegitimate access to weapons. Record keeping requirements provide a basis for police investigation in the event that enforcement is required.

The Regulations are not able to prescribe the conditions under which legitimate use is permitted, as the Act prescribes that this is at the discretion of the Chief Commissioner of Police and the Governor in Council.

Victoria Police regard the information currently required by the Regulations as sufficient for their enforcement needs with one exception. Record-keeping requirements are proposed to be amended to require the seller of a prohibited weapon to record the ABN/ACN/ARBN/IAN (as applicable) of the purchaser, noting that this is information that sellers usually record as standard practice. This amendment aims to ensure that, in cases where a purchaser is exercising a Governor in Council exemption, Victoria Police have a record of the corporate entity on whose behalf a prohibited weapon is purchased.

The reason only this minor change is necessary is due both to Victoria Police's ability to effectively investigate based on the key information already required to be recorded, and because these records most often serve to support investigation by police in the event of the illegitimate use of weapons, rather than forming part of a real-time monitoring system. For these reasons, substantially increasing the record-keeping requirements beyond the proposed minor change would not assist with the police investigation.

2.4.2.2 Increased costs associated with increasing regulatory requirements

While stakeholders have advised that the record-keeping requirements pose a relatively low quantifiable regulatory burden on their activities, they also suggested that any increase in costs associated with changes that provided little or no material additional benefits would be unwarranted.

The increased costs associated with the minor amendment to record-keeping requirements are expected to be marginal. The additional burden only falls on the seller who now has a statutory obligation to record the relevant ABN/ACN/ARBN/IAN. In practice, the majority of sellers would record that information under the status quo resulting in negligible additional burden. This additional impact is modelled in 4.5.

Some stakeholders advised that in some cases, people known to them made use of prohibited weapons for legitimate purposes without going through the required approval channels, because of a lack of understanding or a scepticism about the need for the Regulations. There is thus a risk that imposing additional requirements without a clear and demonstrable benefit could increase the likelihood that legitimate weapons use is driven underground.

2.5 Options

2.5.1 Base Case (regulations sunset on 29 November 2021)

The Base Case is a counter-factual scenario used to provide a common point of comparison for all options. In the context of this analysis, the Base Case represents a situation where the current set of Regulations for the control of weapons sunset on 29 November 2021 and no new approach, either regulatory or non-regulatory, is implemented.

⁷ The proposed Regulations clarify a small number of particulars that a police officer or protective services officer must include in a record of a search carried out under the Act to reflect the rules for searches set out in Schedule 1 of the Act (for example, where Schedule 1 of the Act requires that a parent, guardian or independent person be present during the search of a child, the proposed Regulations clarify that a police officer or protective services officer must record the name of the parent, guardian or independent person).

In the absence of new Regulations, the Act's regulatory controls would only apply to the items defined in the Act itself including dangerous articles, knives and imitation firearms. All other items prescribed by the current Regulations as body armour, controlled weapons (such as spear guns, batons, and bayonets) or prohibited weapons (such as certain combat knives, crossbows and swords) would cease to be regulated.

Stakeholder consultation suggests that in the absence of regulation some businesses and organisations (including, for example, armorers working in film and television, martial arts clubs and military re-enactment groups) would as part of standard practice still take great care to ensure that their legitimate uses of weapons were undertaken safely, and by screening customers or members of organisations that might use weapons inappropriately.

However, consultation did not indicate similar, systematic precautions would be taken in the Base Case by individual weapons users outside of these organisations. Further, in the Base Case, aside from those items defined in the Act, any such efforts at self-regulation would be unsupported by Government enforcement.

2.5.2 Option 1 – Negative licensing scheme

This option involves implementing a scheme whereby no weapons are prohibited, but where a person who breaches the Regulations or commits relevant offences could be prohibited from using or gaining access to weapons in future.

Introducing this option would require:

- setting out the requirements and/or standards that, if breached, could result in a person being issued with a negative licence and
- conditions that a negative license would impose (such as duration of ban and/or the actions that could be taken by the person for the ban to be revoked)

2.5.3 Option 2 – Industry-led code of conduct with government enforcement

Under Option 2, industry would develop and administer its own code of conduct or control scheme for weapons in consultation with the government. This would involve agreeing upon a list of prescribed weapons, record keeping requirements and fee structures. Sophisticated and organised stakeholders expressed their concern for community safety, and also noted the activities undertaken to negate the risks associated with the weapons they use. Given this, it is feasible that those organisations could develop an effective code of conduct specific to their industries.

Industry would be the sole or primary administrator of measures to mitigate risks. For example, martial arts schools could take responsibility for screening their students and managing the risks posed by the weapons that they use.⁸

Given the array of different stakeholders with varying uses of weapons it is likely a number of codes would be developed that differ based on stakeholder group. For example, the code of conduct developed by collectors to ensure secure storage of dangerous weapons would likely differ to a code developed to facilitate military re-enactment. It is likely that any privately developed codes of conduct would not cover all uses of weapons. This is because stakeholder groups would have a focus on their own specific uses of weapons and may therefore lack broader insight that covers all weapons use across Victoria.

This would likely add a layer of complexity to the enforcement of these arrangements compared with a government led regulatory approach. This is because Victoria Police would have to juggle multiple codes of conduct, likely with differing caveats and exceptions, as opposed to one united regulatory framework applicable across all stakeholders. The government would then provide legislative backing to allow the industry arrangements to be enforced. In doing so, the government may offer to investigate or enforce non-compliance or delegate this power to industry. For example, the government could provide DJCS officers with the power to

⁸ Stakeholders advised that in the martial arts sector, professional training schools had strong and clear financial incentives to ensure proper and safe use of prohibited weapons. These incentives were driven by the need to ensure the personal safety of their staff and students, and by the insurance market.

investigate and enforce breaches of the industry code of conduct in response to complaints from employers, employees or consumers.

2.5.4 Option 3: Regulatory approach

Option 3 uses a regulatory approach to the control of weapons, within the constraints of the Act. This involves remaking the Regulations, with minor changes as outlined in 3.2.2 above.

Through the process of collecting and analysing a range of data on the misuse of weapons, as well as observing particular offences in practice, a regulatory approach led by Government can and should still incorporate advice from expert stakeholders in this approach.

For example, stakeholder feedback on the Regulations' effectiveness over the last ten years pointed to multiple examples of active exchanges of information and discussion of relative risk between stakeholders and Victoria Police.

3 Options analysis

3.1 Method of assessment - Multi-Criteria Analysis

The options in this RIS have been assessed using Multi-Criteria Analysis (MCA), which provides a robust, structured and transparent approach to balancing the different impacts given the disparate and qualitative data that are available.

MCA involves:

- specifying several assessment criteria for benefits and costs
- assigning a weight to each criterion reflecting its relative importance to the policy decision (with the total weight placed on benefit criteria and cost criteria being 50% each, to ensure a balanced assessment)
- assessing and scoring each option against each criterion based on the available data and any relevant judgements or assumptions, and
- calculating a weighted score for each option, with the highest weighted score identifying the preferred option.

Each option is scored against each criterion on a scale from -10 to +10, based on an option's impact on each criterion in comparison to the **Base Case** – the scenario in which the Regulations sunset and are not remade and no new approach, either regulatory or non-regulatory, is put into place.

Where possible:

- scores should reflect the relative size or scale of impact when comparing
 - impacts of different options against a single criterion, and
 - different impacts of a single option for all criteria, and
- weights should reflect the priority or importance placed upon a particular type of cost or benefit.

Table 3.1: MCA scale

Score	Description
-10	Much worse than the reference case
-5	Somewhat worse than the reference case
0	No change from the reference case
+5	Somewhat better than the reference case
+10	Much better than the reference case

3.2 Criteria

The options have been assessed against a framework that considers the following criteria:

Table 3.2: Criteria

Benefit criteria	Weighting
Reduce deliberate or accidental weapon-related harm and promote sense of public safety	50%
Cost criteria	-
Costs to government in enforcement and industry in compliance	40%
Discouragement of legitimate use	10%

The sole benefit criterion includes benefits in three areas (deliberate weapons-related harm, accidental weapons-related harm, and public safety). While each option has a materially different impact on these benefits, separating these types of benefits into their own criteria adds little value to the analysis because the impact of each option on any one of these three benefits is the same as that option's impact on the others. Furthermore, equal weight would be placed on each type of harm. As a result, for simplicity and clarity these three types of benefit have been consolidated into a single criterion, which receives the entirety of the benefit weighting (50%).

The cost of enforcement and compliance is where the majority of weighting lies at 40 per cent. This is because minimisation of direct regulatory burden is a key objective of the Regulations. Discouragement of legitimate use refers to instances where stakeholders refrain from participating in a legitimate activity involving a weapon either because they are unsure if the activity is legal (due to lack of knowledge of the Regulations) or because they believe it is too costly or time consuming to acquire approval or exemption. Discouragement of legitimate use receives a lower weighting at ten per cent. This is because the allowance of legitimate uses is seen as a secondary objective of the Regulations in comparison to such objectives as reducing the harm weapons cause.

3.3 MCA Scoring

The table below presents the results of the MCA. As per the Better Regulation Victoria Guidance Note⁹, an option that is more costly than the base case should receive a negative score. As such, a higher score for costs indicates a lower cost to industry or the Government (relative to the Base Case).

The regulatory approach outlined under Option 3 achieves the highest weighted score, and therefore is the preferred option.

Table 3.3: MCA scoring

Criteria	Option 1	Option 2	Option 3
Benefits			
Reduce deliberate or accidental weapon-related harm and public distress	1	4	8
Costs			
Costs to government in enforcement and industry in compliance	-1	-4	-5
Discouragement of legitimate use	0	-2	-4
Weighted score	0.1	0.2	1.6

3.4 Analysis of options

3.4.1 Analysis of benefits

3.4.1.1 Reduce deliberate or accidental weapon-related harm and public distress

Relative to the Base Case, **negative licensing under Option 1** would provide some incentive not to misuse a weapon as a negative licence can be issued. However, this is likely to be a relatively small disincentive for those who wish to cause harm, and poses no upfront barrier to individuals acquiring weapons and deliberately or accidentally causing harm or public distress. Option 1 thus receives a relatively low score of 1 in terms of benefits, reflecting that it would be marginally better than the Base Case but not as effective as Options 2 or 3.

An industry-led code of conduct with government enforcement (Option 2) would entail greater restriction on access to dangerous weapons than Option 1. This is because under Option 2, businesses and organisations with a comprehensive understanding of some of the risks posed by weapons could design an industry-led set of weapons and corresponding controls, which would then be enforced by Government. Such a code would likely be an effective tool in managing risks for those businesses and organisations able to design and administer such a

⁹ Better Regulation Victoria, *Guidance Note – Multi-Criteria Analysis* (2014).

voluntary code, which would reduce and more safely manage access to weapons by their customers or members than a negative licensing regime.

This approach, however, would not be likely to provide the same benefits in cases where individuals sought access to weapons outside of those businesses or organisations. Stakeholder consultation also suggested that while some sophisticated and established businesses and organisations might be well placed to develop a code relevant to weapons used by their customers or members, there was less capacity for smaller groups to develop a code that applied to weapons across their different business and recreational interests.

This would likely add a layer of complexity to the enforcement of these arrangements compared with a government led regulatory approach. This is because Victoria Police would have to juggle multiple codes of conduct, likely with differing caveats and exceptions, as opposed to one united regulatory framework applicable across all stakeholders.

Option 2 therefore receives a score of 4 reflecting that it would be more effective than a negative licensing scheme, but not as effective as Option 3.

A regulatory approach under Option 3 provides the greatest reduction of deliberate and accidental harm caused by weapons as well as promotion of a sense of public safety because it is able to incorporate the benefits of the industry-led code in Option 2, while also reducing risks among weapons users outside of sophisticated stakeholder organisations. The benefits of Option 3 are also greater than Option 2 because this approach is able to better tailor the prescribed weapons to risks and concerns that are known to Victoria Police, and provides a higher-profile and more credible deterrent.

While sophisticated stakeholders know how to ensure safety in their own practices and can achieve this through co-regulation, Government brings a broader perspective to the question of the relative harms attributable to particular weapons. The broad and uniform application of a formal regulatory framework can therefore deliver better overall community safety outcomes – which is the primary objective of these Regulations.

Under Option 3, then, there is likely to be a broader range of weapons restricted and risks being managed than through an industry-led code under Option 2. Further, laws imposed by regulatory approaches carry more legal weight than an industry-led code of conduct. Consultation with recreational organisations and businesses subject to the Regulations suggested that being able to refer specifically to the regulatory framework and its requirements assists these stakeholders in promoting compliance among their members and customers. For these reasons, Option 3 receives a score of 8 the highest score for this criterion.

3.4.2 Analysis of costs

3.4.2.1 Costs to government in enforcement and industry in compliance

Compared to the Base Case, Option 1 would impose some compliance costs on stakeholders. Because a negative licensing scheme would only involve taking action after an offence or breach had taken place, these compliance costs would only be imposed in cases where individuals had accidentally or deliberate misused a weapon, and so would be lower than with proactive enforcement (as in Options 2 and 3).

In the Base Case, there would be no administration or enforcement costs associated with any weapons licensing regime or approvals processes because none would exist. By comparison, Option 1 would involve some administration and enforcement of negative licencing, and so administrative and enforcement costs for Government would be greater in Option 1 than the Base Case. Because the negative licencing activity would likely be ad hoc and driven by offences they would be lower in aggregate than the administrative costs associated with either an industry-led control scheme (Option 2) or the regulatory approach under Option 3. Under those alternative options, administrative and enforcement costs would be imposed for all uses of prescribed weapons rather than being exclusive to specific cases of misuse. Option 1 therefore receives a small negative score of -1 for this criterion, compared to the Base Case where there are no costs of compliance and enforcement.

By comparison, Option 2 would be accompanied by much greater compliance costs as individuals and businesses would be expected to complete an approval/exemption process to meet the standards of an industry-led code or control scheme. These costs would be larger than those of negative licensing, because they would not be limited to specific cases of misuse. Option 2 therefore receives a score of -4, to show that it would be substantially more costly than Option 1.

Option 3 receives a score of -5. The reason Option 3 only scores slightly below Option 2 in this category is the costs of compliance in terms of time spent and fees have been generally reported in stakeholder consultation as negligible compared to what many businesses and organisations would do anyway. The difference in compliance costs between Options 2 and 3 is instead derived from wider coverage of restricted weapons under a Government-led regulatory approach, rather than due to any substantial variation in the compliance requirements themselves (i.e. extent of record keeping). A wider range of weapons being controlled under this Option compared to Option 2 also means that enforcement costs are likely to be greater. This difference will again not be large as regulations around approval/exemption will still need to be enforced in both cases.

3.4.2.2 Discouragement of legitimate use

Option 1 scores the highest in this category with a score of 0 in comparison to the Base Case. This is because a negative licensing scheme does not impede an individual or business from using a weapon for a legitimate purpose.

Option 2 scores lower than Option 1 in terms of discouragement of legitimate use as costs involved in obtaining approval/exemption as well as other compliance may deter certain individuals/businesses from engaging in legitimate use. However, the development of an industry-led code would likely lead to a framework which is as facilitative of legitimate use as feasible given that it would be industry-led. Option 2 therefore receives a score of -2.

Option 3 imposes the largest cost under this criteria. Government-led regulation will, as discussed above, incorporate the best available information about risks to society from the deliberate or accidental misuse of different types of weapons. This is expected to also impose costs on those who might wish to use those weapons for legitimate uses. This incremental impact is likely slight, given that stakeholder feedback suggests the compliance costs in general under the Regulations are relatively low. However, some stakeholders have also pointed to some specific cases of activities that were difficult to participate in under the status quo.

In some cases this was due to perceived ambiguity of Regulations rather than the barrier of compliance itself. Some individuals were reported to have 'given up' on certain legitimate uses (e.g. the collection or use of certain weapons for historical purposes, or learning the martial traditions of specific cultures where a particular style might involve one or more prohibited weapons). Some stakeholders noted foregone recreational or business activities that were attributable to other parts of the regulatory framework, but which were not within scope of the regulation making powers of the Act (e.g. a 28 day-cooling off period for the purchase of swords to newly joined re-enactors or collectors having a substantial impact on sales revenue).

While these impacts or restrictions on legitimate use were rare, difficult to quantify or due to factors beyond the scope of the Regulations proposed in this RIS, the regulatory approach under Option 3 has nonetheless been given a score of -4 to reflect that some imposition on legitimate use occurs under this approach when compared to an industry-led code developed under Option 2.

3.5 Impact Analysis of preferred option (re-making the Regulations with minimal changes)

Stakeholder consultation has found that the quantifiable costs imposed by the Regulations in terms of both time and finances are relatively insubstantial at both the individual and business level.

Specifically, stakeholders suggested that a bigger impact of the Regulations is on the range of activities they permit, or in ambiguity surrounding the implementation of the Regulations, rather than fees and compliance requirements. Namely, they do not feel as though the compliance requirements place any severe burden on day to day life or business activities.

Regardless, the Regulations do entail significant upfront costs for individuals or businesses.

The Regulations present a cost to the individual and business wishing to use a prohibited weapon as completing the approval application takes time and thus forgoes leisure or otherwise productive activities. Businesses that wish to sell a prohibited weapon must also not only complete an approval application but also make record of each sale, which again takes time.

Costs to government are comprised of the time Victoria Police spends assessing approval applications, educating members of Victoria Police personnel, communicating with the public and ensuring there is widespread compliance with the Regulations.

This RIS provides an estimate of these costs on a yearly basis based on the best available data and a range of credible assumptions

3.5.1 Estimates of impact

3.5.1.1 Impact on individuals and businesses

Quantifiable impacts on individuals and businesses attributable to the proposed Regulations are the costs associated with applying for approval to use or sell a prohibited weapon and, in the case of businesses, the cost of recording prescribed information associated with a transaction.¹⁰

The analysis in this RIS estimates that these costs are around \$1,143,279, noting this is based in part on several credible and conservative assumptions outlined below.

3.5.1.2 Cost to individuals of applying for approvals

Victoria Police data suggest there are an average of 270 applications for approvals from individuals each year.¹¹ Stakeholder feedback suggested that it rarely took more than half an hour for an individual to complete an application.

The analysis in this RIS assumes that:

- it can take up to two hours to complete an application (a conservative estimate that can account for cases in which individuals may require additional time to find relevant documentation associated with their application), and
- the value of a private individuals' time is \$43 per hour.¹²

Table 4.4 shows the estimated total cost to individuals per annum is \$23,254

Table 3.4: Estimated costs to individuals

Estimated costs to individuals			
Approvals per annum	Estimated time to complete application	Value of applicant's time (per hour)	Estimated total annual cost
270	2 hours	\$43	\$23254

¹⁰ This RIS estimates the impact of these Regulations by focusing on the impacts of prescribing prohibited weapons, rather than the prescribed controlled weapons. The prescription of additional controlled weapons does not impose costs on a legitimate user of a controlled weapon because they may sell or use that weapon without requiring approval from the Chief Commissioner of Police or exemption via gazettal and without needing to undertake any additional compliance activities such as recording details of transactions.

¹¹ Based on data provided by Victoria Police, from 2015-16 to 2019-20 there were an average of 313 applications for approval to use a prohibited weapon each year, including an average of 270 applications from individuals and an average of 43 applications from businesses (based on the five-year ratio of valid individual approvals relative to total valid approvals). Estimates of applications approved and rejected were based on the approval rates for total applications over the last five years.

¹² The value of a private individual's time is based on the after tax average hourly Victorian earnings. This marginal value of an additional hour's work for an average Victorian reflects the trade-off between work and leisure, and on this basis is used to estimate the value of time taken by an individual to apply for an approval. This method is consistent with the typical approaches to estimating the value of private leisure time. See, for example, Australian Government, Department of Prime Minister and Cabinet, Office of Best Practice Regulation, Regulatory Burden Measurement Framework, February 2016.

3.5.1.3 Cost to businesses of applying for approvals

Victoria Police data suggest there are an average of 43 applications for approvals from businesses each year.¹³ Stakeholder feedback suggested that it rarely took more than half an hour for a business to complete an application.

The analysis in this RIS assumes that:

- it can take up to two hours to complete an application (providing a conservative estimate that can account for cases in which businesses may require additional time to find relevant documentation associated with their application), and
- the value of a business owner or employee's time (including on-costs and overheads) is \$98 per hour.¹⁴

Table 4.5 shows the estimated cost to businesses is \$8,358

Table 3.5: Estimated costs to businesses associated with approval applications

Estimated costs to businesses associated with approval applications

Approvals per annum	Estimated time to complete application	Value of applicant's time (per hour)	Estimated total annual cost
43	2 hours	\$98	\$8,358

3.5.1.4 Cost to businesses of keeping records

Victoria Police data suggest that there are currently 94 business approved to sell prohibited weapons. In the absence of data on the volume of business activity in this sector, the analysis in this RIS assumes that all 94 businesses are all active and sell, on average, up to 200 prohibited weapons per year.¹⁵ Stakeholder feedback suggested that for most sellers, recording the prescribed details for the transaction of a prohibited weapon posed negligible cost to them in time and effort. While the Regulations also prescribe the form of record (e.g. a bound logbook or digital system), stakeholders noted no incremental costs to their business associated with obtaining or maintaining a prescribed form of record.

The analysis in this RIS assumes that:

- it takes up to 30 minutes (in the status quo) for a seller of prohibited weapons to record the prescribed details (a conservative estimate)
- the additional requirement in the proposed Regulations to record the ABN/ACN/ARBN/IAN (as applicable) of the purchaser of a prohibited weapon could add an additional 5 minutes to the process (noting that this information is not relevant to all transactions and many sellers record this information already), and
- each of the 94 businesses currently approved to sell weapons may need to spend up to \$500 per year to obtain or maintain a prescribed form of record.

Table 4.6 shows the estimated cost to businesses per annum associated with recording sales is \$1,111,667. This estimate includes the additional record keeping requirements as outlined in 3.2.2.1. While this additional burden

¹³ Based on data provided by Victoria Police, from 2015-16 to 2019-20 there were an average of 313 applications for approval to use a prohibited weapon each year, including an average of 270 applications from individuals and an average of 43 applications from businesses (based on the five-year ratio of valid individual approvals relative to total valid approvals). Estimates of applications approved and rejected were based on the approval rates for total applications over the last five years.

¹⁴ This is based on the average hourly earnings of a full-time adult in Victoria, multiplied by the on-costs and overheads multiplier of 1.75 recommended in Appendix D of the Department of Treasury and Finance's *Regulatory Change Measurement Manual*. This value represents the opportunity cost to the business of the employee/owner's labour.

¹⁵ This is considered an extremely conservative assumption, on the basis that this assumption implies 18,800 prohibited weapons are sold each year and Victoria Police data suggest that there are currently 612 individuals with approval to use prohibited weapons, which would in turn imply that each legitimate user was purchasing an average of around 30 prohibited weapons per year.

is likely to be negligible, in an effort to be conservative it is assumed the additional requirement will increase the time it takes to make record of a sale by ten per cent.

Table 3.6: Estimated costs to businesses associated with recording sales

Estimated annual costs to businesses associated with recording sales

Number of business	Estimated annual sales	Estimated time to record sale	Hourly value of time	Cost of form of record (per business)	Estimated total cost
94	200	35 minutes	\$98	\$500	\$1,111,667

The combined total impact on individuals and businesses associated with the compliance requirements for these Regulations is therefore estimated be around \$1,143,279, noting again that this is based on multiple conservative assumptions.

An additional impact associated with estimated maximum fee revenue attributable to the proposed Regulations (see Chapter 7) of \$63,500 brings the total estimated impact of the proposed Regulations to \$1,206,779. Due to the additional record-keeping requirements, the *incremental* difference in impact between the status quo and the proposed Regulations is estimated to be only \$146,851 per year.

3.5.1.5 Break-even analysis

The break-even analysis below outlines the expectation that the proposed Regulations yield benefits to society that are at least as great as the costs they impose, relative to the Base Case in which there are no regulations.

3.5.1.6 Breaking even in terms of the avoided costs of weapons-related harm

As noted in the Chapter 2, the estimated social and economic costs of weapons-related crime in Victoria is \$281 million per annum. The conservative estimate of compliance costs above suggest that they are equivalent to just 0.35 per cent of the total estimated costs of weapons-related crime. This implies that the Regulations can be expected to break even if in the absence of the Regulations, the harms of weapons crime alone are expected to increase by more than 0.35 per cent.

Given feedback from stakeholders and Victoria Police on the need for and effectiveness of the current Regulations, and the volume of offences under the regulatory framework outlined in Chapter 2, it is credible to expect that remaking the current Regulations (with the minor amendments discussed in this RIS) will yield a net benefit to society. This would be a break-even point even before accounting for the benefits the Regulations create in terms of avoided harm arising from the accidental misuse of weapons or public safety concerns.

Alternatively, given the current net present value of a statistical life of around \$4.7 million, and the ten year net present value of the estimate costs of the proposed Regulations of around \$8.9 million, the proposed Regulations would "break even" and yield a net social benefit provided that they reduce weapons-related deaths by just two over a period of ten years.¹⁶

¹⁶ The value of a statistical life is based on Better Regulation Victoria's [Suggested value of a statistical life in RISs and LIAs](#), which suggests that the value of a statistical life year is \$186,985 in June 2016 dollars, with a 40-year net present value of a statistical life of around \$4.3 million. Adjusting this to March 2021 dollars using ABS data on inflation suggest a current dollar value of a statistical life year is \$204,547. Using the same method as in Better Regulation Victoria's guidance, this implies a 40-year net present value of a statistical life of around \$4.7 million.

4 Fees

This chapter assesses the impact of fees prescribed in the proposed Regulations and the rationale for keeping fee units at current levels.

4.1 The need to consider a full cost recovery option

The Victorian Government's Cost Recovery Guidelines suggest that a starting point for setting fees and fee structures should be to consider an option for full cost recovery, to avoid disproportionate cross subsidisation of users of government services by other users or by the Victorian community as a whole. The Cost Recovery Guidelines recommend that fees be set above or below full cost recovery only when there is a clear reason to do so.

4.2 Current volume of approvals activity and the associated costs

Based on advice from Victoria Police regarding the staff required to administer approvals, and the given the relatively low volume of applications, the total cost to Victoria Police of administering approvals is estimated to be around \$75,000 per year for the approval of around 313 applications per year, on average. A full cost recovery option would therefore set fees with an average fee of around \$240 per application.

4.3 Current fees and fee revenue

The Regulations prescribe fees for applications to the Chief Commissioner of Police for approval to use or sell a prohibited weapon, or to vary an approval. The rationale for charging fees in these regulations is that those fees cover costs associated with administering an approvals regime to manage potential risks posed by applicants' intended use of weapons, and that as the applicants are generating demand for the approvals activity it is appropriate under the Government's Cost Recovery Guidelines that they bear at least some of that cost.

The Regulations prescribe a lower fee for applicants who hold a current licence under the *Firearms Act 1996*, and provide an exemption from fees for applicants who are licenced under the *Firearms Act 1996* to operate as a firearms dealer. This reflects the fact that as Victoria Police already have necessary details about those applicants on file, the approvals process is marginally less labour intensive.

Current fees units prescribed and their monetary value (from 1 July 2021 to 30 June 2022) are:

- 13.5 fee units (\$202.91) for applicants without a licence under the *Firearms Act 1996*
- 11.5 fee units (\$172.85) for applicants with a licence under the *Firearms Act 1996*, and
- 5 fee units (\$75.15) for applications to vary an approval.

This suggests (based on the currently prescribed fees and the five-year average volume of around 313 applications per year) that the maximum feasible annual fee revenue associated with the current fee structure would be around \$63,500 per year. This suggests that the currently prescribed fees do not fully recover the costs of administering approvals, with a small under-recovering of around \$11,500 per year, on average.

4.4 Preferred option: remake the regulations with the current fees

Given that the very low volume of approvals and the small total administrative cost to Victoria Police of administering approvals, this RIS does not include a detailed options analysis for prescribing fees

Instead, the paragraphs below provide a brief discussion of why the preferred approach is to remake the regulations with the current fee settings, as opposed to pursuing a full cost recovery option that increases fees to recover the small shortfall in fee revenue.

4.4.1 The administrative effort of changing fees would likely outweigh the current shortfall in revenue

Given the small total administrative cost of \$75,000 per year to Victoria Police of administering the Regulations, any cross-subsidisation due to these fees is likely to be similarly small in value and consequence. Determining how to equitably and efficiently recover the small revenue shortfall in the context of the current fee structure would require, for example, ascertaining what proportion of the effort associated with the unrecovered costs was attributable to each type of approval.

The time and effort involved in estimating those administrative costs, updating each of the three fees and communicating the nature of and reason for those changes to stakeholders would likely exceed the shortfall in revenue.

4.4.2 Increasing in current fees may risk increasing non-compliance

In the case of the proposed Regulations, none of the stakeholders consulted regarded the fees as prohibitively costly or suggested that they posed a disproportionate barrier to their activities. However, there were several cases where stakeholders suggested that other aspects of the regulatory regime deterred people from participating in the legitimate use of weapons, or using weapons without going through the proper approval channels.

4.4.3 The fees prescribed in the proposed Regulations

In order to avoid the potential unintended consequence noted above, and given that there are negligible net benefits from addressing the small revenue shortfall and any associated cross-subsidisation to be reaped in negating cross-subsidisation, the proposed Regulations do not increase the number of fee units prescribed in line with an option of full cost recovery. The proposed approach to fee setting in this RIS is to remake Regulations for fees with no change to the current fee settings and structure.

5 Impact on competition and small business

This chapter discusses some of the considerations for competition and small business.

While small businesses may experience disproportionate effects from these Regulations, these effects are not likely to be widespread or significant. A large proportion of stakeholders subject to the Regulations are organisations not actively seeking profit but rather recreation. As such, the majority of stakeholders are not competing with large businesses in the marketplace. Small businesses within this industry are mostly limited to small-scale weapons retailers and film-makers.

Reasons small businesses might be disproportionately affected by the preferred option are mostly limited to small businesses lacking economies of scale that allow compliance costs to be spread across a large customer base, having less capability to understand and comply with regulatory requirements, and spending a higher proportion of revenue on compliance costs such as fees.

Regulatory burden on a small business under the preferred option presents itself in the following two forms:

- the small business must spend time and/or money to acquire an approval or exemption to bring into Victoria, manufacture, display, sell, possess or use a prohibited weapon
- if the small businesses sells a prohibited weapon they must spend time making a record of the sale.

Stakeholder feedback has suggested these burdens are not substantial and thus any disproportionate effect on small businesses is slight. Further, the proposed changes to the Regulations, namely additional record-keeping requirements, pose minimal further burden.

The Victorian Guide to Regulation also requires a RIS to assess the impact of Regulations on competition. Regulations can affect competition by preventing or limiting the ability of individuals and businesses to enter and compete within particular markets.

The costs which might impede an individual or business from entering the market in the case of the preferred option are limited to the compliance costs just mentioned with the addition to the barrier of understanding the Regulations and what is prescribed.

As mentioned, stakeholder consultation revealed that the burden of acquiring an approval or exemption as well as the process of record keeping in the case of retailers is not substantial enough to prevent a business from feasibly undertaking their desired activities. By this same notion, these minimal costs would not bar large numbers of individuals or businesses from entering into the marketplace.

An overview of the anticipated small business and competition impacts of the proposed Regulations is included in Table 6.1 below.

Table 5.1: Anticipated small business and competition impacts of the proposed Regulations

Proposed Regulations	Impact on small businesses	Competition
Approval/exemption mechanism to bring into Victoria, manufacture, display, sell, possess or use a prohibited weapon	Small businesses consulted noted that the time and money spent acquiring approval or exemption did not have any material consequence on their desired business activities. The approval/exemption process does not appear to have a disproportionately adverse impact on small businesses.	The approval/exemption mechanism is not likely to deter individuals or businesses from entering into a market involving prohibited weapons as the upfront cost of applying for an approval is limited. Incumbent businesses face the same (low) costs in terms of renewal of approval.
Record-keeping requirements	Stakeholders note that the regulatory burden associated with these requirements was minor. Consultations found that smaller scale firms who did not have automated record-keeping systems bore a larger burden by needing to manually record sales, but that this burden was still minimal and so not a substantially disproportionate impact.	The record-keeping requirements are not likely to deter individuals or businesses from entering into a market involving prohibited weapons as the regulatory burden posed by these requirements is quite low. Incumbent businesses face the same (low) record-keeping requirements.
Prescription of weapons to particular categories	This impact proportionately impacts both small and large businesses, because the impact on the range of weapons that can be sold affects all businesses equally.	By definition, prohibiting the use of a specific type of weapon (without an exemption or approval) will reduce the potential business activity involved in selling that weapon. In this sense, it presents a barrier to entry for those who would otherwise sell those weapons.

6 Implementation, enforcement and evaluation

6.1 Implementation

The proposed Regulations will come into effect on Friday 26 November 2021. As is the case with the Control of Weapons Regulations 2011, implementation will be undertaken by Victoria Police. As the proposed Regulations do not vary significantly from the status quo, Victoria Police is not likely to require any additional resources. Similarly, implementation of the proposed Regulations is not expected to have a material impact on stakeholders as compared with the status quo.

6.1.1 Communication

The minor changes in the proposed Regulations (compared to the status quo) will be clearly communicated to various stakeholders by Victoria Police as part of their routine and ongoing stakeholder engagement, which focuses on informing and educating those subject to the Regulations. Victoria Police will also inform stakeholders of these changes through its website, industry contacts and/or newsletters.

6.1.2 Enforcement and compliance

Victoria Police will be responsible for enforcing and administering the proposed Regulations and will do so using the same enforcement and compliance systems and processes under the status quo. The variations the proposed Regulations impose will not require changing the way Victoria Police use these mechanisms to enforce the Regulations.

Enforcement and compliance-activities will continue to include:

- routine monitoring of approval holders' compliance with requirements
- monitoring websites which trade weapons to ensure buyers and sellers are compliant
- educating the public around changes to the Regulations and how they might be affected, and
- investigating intelligence information to identify non-compliance and revoke approvals where necessary.

6.2 Evaluation

DJCS has developed an evaluation strategy to ensure the implementation of the proposed Regulations is efficient and effective in mitigating the misuse of weapons which may cause harm while allowing for legitimate use. A formal evaluation framework will not be proposed given the minimal burden of the proposed Regulations. The proposed evaluation strategy is outlined below and will be refined as needed when the Regulations come into effect.

6.2.1 Evaluation methods

DJCS will monitor and evaluate the proposed Regulations in respect to their overarching objectives, being to reduce the weapons-related harms outlined in this RIS and promote a sense of public safety. Monitoring and evaluation will also consider any change in the impacts on legitimate uses of weapons.

The main issue in evaluation is measuring their impact in relation to the Base Case, which is a counterfactual. Given the difficulty in establishing with certainty how much harm weapons would cause to Victorians in the absence of the Regulations, the evaluation strategy will rely mainly on measuring weapons-related harm in Victoria over time, and ongoing stakeholder feedback on the administration and implementation of the Regulations.

If the Regulations continue to be effective at minimising weapons related crime and promoting safety then, absent other changes to the underlying risk factors, the analysis should observe no substantial deviation in the trends for these offences. For example, DJCS can monitor changes in trends in offences involving weapons such as:

- murder
- robbery
- kidnapping/abduction
- assault
- sexual assault.

Instances of accidental misuse causing harm are harder to measure because not all cases will be accompanied by a police report. Whether the proposed Regulations adequately facilitate the legitimate use of weapons can be monitored by DJCS in consultation with Victoria Police and their routine stakeholder engagement. Victoria Police engage stakeholders who lawfully use weapons and can advise in any significant changes in the Regulations' imposition in legitimate activity.

Another measure of the effectiveness of the regulations is the rate of compliance. Victoria Police collect data which indicates compliance when conducting searches under the Act and/or when auditing approval holders. These data can help monitor any changes in compliance trends.

DCJS would also investigate any notable rise in the unlawful use of a specific weapon type and take advice from Victoria Police regarding the level of concern for community safety that this generates.

Additionally, DJCS would consider any significant changes to weapons regulation in other Australian jurisdictions to enable a reflection on the ongoing appropriateness of the Victorian Regulations over the course of their 10-year existence.

7 Stakeholder engagement

The following stakeholders were engaged with by Deloitte as part of this RIS process:

- Geelong Military Re-enactment Group
- Global Gear Online
- Golden City Collectors Association
- Imitation firearm manufacturer
- Martial Arts Australia
- Motion Picture Armourer
- Victoria Police

Consultations were held virtually. During consultations, stakeholders were asked for feedback on the proposed options, including any estimates on costs, benefits and effectiveness. Feedback from stakeholders was de-identified and incorporated into this RIS.

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