Regulatory Impact Statement – Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2021

Department of Justice and Community Safety

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Contents

Tables

Glossary

Acronym	Full name
ABS	Australian Bureau of Statistics
the Act	*Drugs, Poisons and Controlled Substances Act* 1981
ATS	Amphetamine-type stimulants
DJCS	Department of Justice and Community Safety
EUD	End-user declaration
MCA	Multi-Criteria Analysis
PACIA	Plastics and Chemicals Industries Association
the Regulations	*Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations* 2010
RIS	Regulatory Impact Statement
SIA	Science Industry Australia

Executive summary

Purpose of this regulatory impact statement

The purpose of this RIS is to review the effectiveness and impacts of the Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010 (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 *Drugs, Poisons and Controlled Substances Act 1981* (the Act) and sunset on 25 October 2021. The Regulations currently give effect to the Act by:

- prescribing as precursors specific chemicals or apparatus that may be used in the illegal production of amphetamine-type stimulants (ATS), and
- end-user declaration (EUD) requirements in the wholesale market for those precursors.

Problem statement

The regulations are intended to address the following problems:

- demand for ATS creates an incentive to divert precursors from legitimate end uses to illegal ATS production
- ATS use is increasing, along with the related harms
- production of ATS in Victoria would be larger without the Regulations
- local ATS production methods are being altered to circumvent the current list of precursors.

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 Part VB of the Act, including:

- adding to or removing from the list of prescribed precursors
- prescribing requirements (EUDs)
- record-keeping requirements and
- storage requirements.

Summary of options considered

Three approaches to addressing the problem have been considered, each of which is 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 precursors sunset on the 25th of October 2021, with no new approach to address the problem established.

Options identified and assessed in this RIS include:

- a government information and education campaign
- an industry-led code of conduct
- a regulatory approach, based on the status quo (with an overall increase of 36 prescribed precursors).

Option 1 – information and education campaign

Option 1 uses a non-regulatory approach to control the supply of precursor chemicals through information and education campaigns. Under this option, education campaigns would be targeted towards legitimate suppliers to raise awareness of the potential misuse of precursors, discourage the provision of precursors without an EUD and inform suppliers on the appropriate measures to take in these circumstances.

Option 1 involves allowing the current Regulations to sunset.

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

Option 2 establishes a partnership between industry and government to develop arrangements to control the supply of precursors. Under Option 2, industry would develop its own code of conduct or control scheme for the supply of precursors in consultation with government. This may involve agreeing upon a list of prescribed precursors and EUD requirements. Government would then implement and enforce the code of conduct. Breaches would be punishable by law.

This option is not feasible through just amending the Regulations. It would first require amendments to the Act itself, including a change to the regulatory approach overall, provisions to enshrine an industry-developed code as the relevant standards and requirements, and powers to enable those arrangements to be enforced. The government would then investigate or enforce non-compliance with the agreed arrangements.

Option 3 – regulatory approach

Option 3 uses a regulatory approach to control the supply of precursors. This involves remaking the Regulations with a revised list of prescribed chemicals and apparatus.

The proposed Regulations will now prescribe 136 precursor chemicals and 12 precursor apparatus. Compared to the existing Regulations, the proposed Regulations will increase the overall number of prescribed precursors by 36. The changes comprise:

- 39 new chemicals added to the list of precursor chemicals in Schedule 1 (including 3 gases contained in cylinders which are being transferred to the chemical list in Schedule 1 from the equipment list in Schedule 3) and 4 new apparatus added to list of precursor apparatus in Schedule 3, and
- 3 chemicals and 4 apparatus which have been determined to no longer pose a risk as precursor chemicals or equipment and which are to be removed from the Regulations.

The revised list has been informed by either the national best practice list of precursor chemicals maintained by the national Precursor Working Group, or the list of precursors recently prescribed by the Commonwealth under the Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020 (Cth).

Consultation with stakeholders and Victoria Police found no feedback from stakeholders about the need to implement any other feasible changes in the proposed Regulations, which would be limited to introducing more stringent EUD, ID or record-keeping requirements.

Option 3 will provide a regulatory foundation under which the control scheme for precursors will continue to operate.

Assessment of options

The options in this RIS are assessed in Chapter 4 using Multi-Criteria Analysis (MCA) to score each of these approaches against the following criteria:

- benefits, including:
  - social and economic benefits arising from reduced diversion of precursors to illegal uses
  - record keeping requirements assisting with police investigations, and
- costs, including:
  - compliance costs to industry, and
  - costs to government of administering the regulations

The results of the MCA show that the regulatory approach is the preferred option. Compared to the Base Case and the other options, this is the most effective at reducing the social and economic costs of ATS use (by reducing diversion of precursors and assisting police with investigations), without imposing a

disproportionate cost on industry (in terms of compliance) or government (in terms of administering and enforcing the regulatory framework).

Impact of preferred option (regulation)

The impact of the proposed Regulations on stakeholders has been assessed by estimating the regulatory burden imposed on those selling precursors (by requiring them to collect and store information provided to them by buyers as prescribed in the proposed Regulations) as well as those who purchase precursors (by requiring them to complete and provide to sellers the information prescribed in the proposed Regulations).

This analysis is based on available data about the market for precursors and transparent and credible assumptions that have been informed by stakeholder consultation.

This RIS estimates that the cost of recording information that is attributable to the proposed Regulations themselves is $0.8 million per year, compared to a Base Case in which no regulations were remade. While the Base Case is the relevant technical point of comparison in impact analysis, Chapter 4 of this RIS also notes for the benefit of stakeholders, that the *incremental* difference in impact between the status quo and the proposed Regulations (due to an overall increase of 36 prescribed precursors) is estimated to be $240,000 per year.

These estimated impacts are based on:

- an estimated total feasible cost of recording transactions (including costs for both purchasers and suppliers or precursors) for the proposed list of precursors of around $4 million per year,
- the expectation, informed by consultation with stakeholders and Victoria Police, that in the Base Case, without the proposed Regulations, this information would be recorded as part of businesses' record-keeping practices for around 80 per cent of transactions, based on the assumptions that:
  - larger firms (those with more than $5 million in annual turnover) comprise around 60% of the revenue in the market, based on ABS data, and that smaller firms (those with less than $5 million in annual turnover comprise around 40% of the revenue in the market
  - these market shares are a proxy for the proportion of total precursor transactions that larger and smaller firms undertake (informed by stakeholder feedback and advice from Victoria Police that larger firms routinely handle more prescribed precursor transactions than smaller firms),
  - all transactions by businesses with turnover of more than $5 million per year would reflect record-keeping practices required by the regulations even if there were no regulations in place, and
  - 50% of transactions by businesses with turnover of less than $5 million per year would reflect record-keeping practices required by the regulations even if there were no regulations in place.

The last of these assumptions is considered particularly conservative given that stakeholder feedback suggests the majority of businesses would undertake similar activities required by regulations even in the Base Case. This means that the last of the above assumptions (that records equivalent to those required by regulations would not be kept in 50% of transactions by smaller businesses) is a worst-case scenario. This assumption is used to provide a conservative estimate of the regulatory burden imposed on businesses by the proposed Regulations. It should not be interpreted as suggesting any expectation of a widespread lack of record-keeping or compliance among smaller businesses.

The impact analysis in Chapter 4 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. Considering the significant burden of ATS-related harm, it is determined that if even 0.07% of total ATS-related harm were avoided due to these regulations, they would break even.

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 minimised by Victoria Police's focus on education as part of their enforcement of the proposed Regulations.

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 (which often involves building relationships with suppliers and conducting site visits). This includes advising industry stakeholders of the changes to prescribed precursors compared to the status quo.

Victoria Police will also enforce the regulatory framework through their role in inspecting EUD records and encouraging compliance, continuing their current enforcement and monitoring practices.

The success of the new regulations will be evaluated based on measures relating to production and use of ATS in Victoria and the size and health of the chemical manufacturing and wholesaling sector in Victoria.

Public consultation

DJCS welcomes feedback from all interested members of the public on any matters they feel would improve the proposed Regulations. DCJS invites any stakeholders with further information or views on the likely transaction volumes of precursor chemicals and equipment to provide this feedback to the Department through the RIS consultation process.

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 precursors 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 Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010 (the Regulations), assess feasible options for changes to the Regulations, and set out a preferred set of new regulations.

The Regulations, which prescribe matters for the purposes of the *Drugs, Poisons and Controlled Substances Act 1981* (the Act), sunset on 25 October 2021. The Regulations give effect to the Act by prescribing chemicals or apparatus as precursors that may be used in the illegal production of amphetamine-type stimulants (ATS), as well as prescribing identification and end-user declaration requirements in the wholesale market for those precursors.

If the Regulations were to sunset without being replaced the Act's effectiveness would be severely constrained with implications including increased risks to the community (due to the risks and harms associated with ATS production and consumption — see Chapter 2), and to the reputation of stakeholders in the sector.[1]

1.2 Precursor control schemes

Precursor control schemes aim to prevent the diversion of legal precursor chemicals and equipment (precursors) for use in the production of illicit drugs. These schemes achieve this by regulating legitimate transactions of materials that can be used to produce ATS.

All states and territories in Australia have precursor controls, with most requiring a valid end-user declaration (EUD) for the sale of precursor chemicals and equipment. This provides police with a starting point for investigations relating to the diversion of precursors. The importation of precursors is managed at the border by the Commonwealth Government. Victoria's precursor control scheme is part of the Victorian Government's efforts to reduce the harms caused by illicit drug distribution in the community.

Precursors are chemical substances (including substances used as solvents, cleaning agents and chemical reagents) and apparatuses that have many legal uses in industry, but which can also be used to make illegal drugs in clandestine laboratories.

Victoria's precursor control scheme commenced operation on 1 January 2011 and requires wholesale suppliers of precursors to:

- obtain from purchasers an end-user declaration (EUD) declaring the intended end-use of the precursor items being purchased
- restrict access to stored Category 1 chemicals
- keep EUDs and transactions records for specified periods and
- allow police to inspect records.

EUDs contain:

- the name and address of the receiver
- details of the receiver's proof of identity

[1] Several industry stakeholders and peak bodies noted that the creation of this regulatory framework in 2010, based on a previous industry code of conduct, had helped improve monitoring and enforcement of the risk of diversion, and in doing so helped protect and maintain the reputation of stakeholders in the industry.

- the name and quantity of the precursor to be supplied
- the intended use of the precursor, and
- the proposed date of supply of the precursor (category 1 chemicals only).

These EUDs must be kept for at least two years (category 2 chemicals and category 3 precursors) or five years (category 1 chemicals) as per section 80N of the Act.

The Victorian scheme applies only to chemicals in their pure form, not when present in mixtures with other chemicals, and excludes retail sales of prescribed precursor items.[2] It covers precursors and scientific equipment that can be used for the manufacture of drugs. Equipment currently prescribed under the Regulations includes, for example reaction flasks and heating mantles.

The two main (legal) stakeholder groups impacted by this scheme are businesses involved in the manufacture and sale of precursor chemicals and/or equipment, and facilities who legitimately purchase and use precursor chemicals and/or equipment.

While the total economic or social cost of these regulations is not estimated to be signficant, the Department has sought to prepare this RIS in the interests of regulatory best practice and thorough consultation with the affected stakeholders.

1.3 Preparation and structure of the RIS

The key purpose of this RIS is to assess the impact of different options for replacing the sunsetting 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

Options to achieve the objectives of the intervention were developed by government and informed pre-RIS consultation (see Chapter 7 for details of 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 proposed Regulations and possible options on different groups for different groups. Stakeholders included Victoria Police, chemical wholesalers and chemical producers.

(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 costs and 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.

[2] This is because pure chemicals are more easily used in the manufacturing process and are generally more cost-effective, as isolating pure chemicals from mixtures can be difficult and costly.

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

Chapter 2 – Problem statement
Chapter 3 – Development of options
Chapter 4 – Options analysis
Chapter 5 – Impact on competition and small business
Chapter 6 – Implementation, evaluation and enforcement
Chapter 7 – Stakeholder engagement

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 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.

DCJS invites any stakeholders with further information or views on the likely transaction volumes of precursor chemicals and equipment to provide this feedback to the Department through the RIS consultation process.

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 to the RIS and draft regulations, and the Statement of Reasons, will also be made available through the Engage Victoria website.

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 Demand for ATS creates an incentive to divert precursors from legitimate uses to illegal ATS production

ATS such as methamphetamine are produced in Australia and overseas in illegal laboratories. To produce these illicit drugs, chemical starting materials called drug precursors are required. While these chemicals often have other legitimate uses, the opportunity for significant profit in the illegal drug trade creates an incentive for these precursors to be diverted from their legitimate use to ATS production. One example of how this can occur is by criminals establishing businesses designed to appear legitimate to purchase precursors from chemical wholesalers. The growing market and high profit margin available from the sale of ATS in Australia makes it a target for organised crime groups who seek to divert precursors from the legitimate sector.[3]

The opportunity for profit from the fraudulent acquisition of precursors is substantial. It is estimated that Victorians spend an average of $4 million a day ($1.4 billion per year) on methamphetamine alone, using 3,124.6kg of this drug in Victoria in 2019[4]. The ATS market comprises a significant portion of the broader illicit drug market, which is estimated to be valued at $11.3 billion ($3 billion in Victoria when apportioning by population share).[5] The National Drug and Alcohol Research Centre estimated that the profit from its trade within Australia amounted to approximately $4.6 billion in 2019.[6]

2.2 ATS use is increasing, along with the related harms

While the use of ATS has generally been declining as a drug of choice among the general population, its use among regular drug users has increased.[7] The *Illicit Drug Reporting System* (IDRS), which collects self-reported information on drug use and related harms annually from individuals in Australian capital cities who regularly inject drugs, reports that since 2009 the proportion of respondents reporting weekly or more frequent crystal methylamphetamine use increased from 11 per cent to 48 per cent and the use of any form of methylamphetamine increased from 60 to 78 per cent.[8] The median number of days of any use in the six months preceding the interview increased from 14 days in 2010 to 48 days in 2019.[9]

There are numerous social and economic costs associated with illicit drug use, including:

- reduced economic productivity (including missing work and being less productive when at work)
- increased participation in risky activities (e.g. unprotected sex, driving while intoxicated, violence)
- criminal behaviour, including criminal behaviour on the part of users in order to acquire funds to pay for drugs (e.g. theft and assault), and
- increased morbidity and mortality (disease and death).

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[3] Victoria Police, Submission to Parliament of Victoria, *Inquiry into the supply and use of methamphetamines, particularly 'ice' in Victoria* (4/11/2013)
[4] Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Report 2019*, 13
[5] Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Report 2019*, 13
[6] Australian Strategic Policy Institute, 'High Rollers' – A study of criminal profits along Australia's heroin and methamphetamine supply chains (2021).
[7] Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2019*, 40; Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2018-19* (2020) , 34.
[8] Ibid, 33.
[9] Ibid, 34.

The social cost of ATS use in Victoria has been growing rapidly, from an estimated $319.5 million in 2004-05 to $1.1 billion in 2018-19.[10] These costs include household expenditure, decreased productivity and healthcare and law enforcement costs.

Illicit drug use disproportionately occurs in vulnerable sectors of the community. For example, the use of ATS among people with a mental illness is 2.2 times greater than those without a diagnosed mental illness and 2.3 times greater among people who are unemployed.[11] Self-reported survey data do not establish a causal link between mental health conditions and drug use, but the Australian Institute of Health and Welfare notes in its National Drug Strategy Household Survey that the direction of causation can go both ways: a mental illness may make a person more likely to use drugs to provide short-term relief from their symptoms, while other people have drug problems that may trigger the first symptom of their mental illness.[12]

Because the market for illicit drugs is unregulated and covert, competitors must protect their interests and often resolve disputes through the threat or use of force. This aspect of illegal markets means the capacity for violence and the willingness to carry it out, often lead to intimidation and in some cases violent conflict between competitors. This central role of violence in managing illegal activities means that illicit drug markets can fuel tensions that escalate into more widespread criminal activity, violence and social unrest.

Diversion of precursors to produce ATS increases the availability and consumption of ATS, contributing to the rising scale and costs of the harms associated with ATS use.

2.3 Production of ATS in Victoria would be larger without the regulations

Despite the current regulatory framework and enforcement efforts from authorities, there are indications that local production of ATS using precursor chemicals is prevalent in Victoria. While the detection of clandestine laboratories in Victoria decreased from 113 in 2009-10 to 91 in 2018-19 and has also fallen in the rest of Australia, it is likely that there are still a substantial number of laboratories in Victoria, and these laboratories are of significant size.[13]

Although not the subject of the Regulations, the total weight of ATS precursor seizures at the Australian border has increased substantially over the last decade. Between 2009-10 and 2018-19, seizures grew 371 per cent from 556 to 2,621 kilograms (the second highest on record).[14] Several countries, such as India, China and Iran, have emerged as growing sources of precursors.[15] Taken together with the growing national share of clandestine laboratories in Victoria, this indicates that there is currently sufficient labour, technical knowhow and chemicals within Victoria to manufacture significant quantities of ATS.

Without regulations limiting the leakage of precursors from the legitimate sector, the availability of precursors for domestic ATS production would be much greater because it would be easier to acquire these chemicals.

2.4 Local ATS production methods are being altered to circumvent the current list of precursor chemicals

To circumvent the existing regulatory framework, producers of illicit synthetic drugs have utilised alternative chemicals that are not prescribed as drug precursors. These substances, called pre-precursors, can be transformed into ATS precursors relatively easily.[16] Alternatively, illicit drug producers may use chemicals not covered by the regulations to avoid EUD requirements and produce new ATS.[17]

Circumventing the regulated list of precursors makes leakage into the illicit sector more difficult to detect because of the lack of the record keeping requirements that are placed on chemicals and equipment covered by the

[10] Australian Institute of Health and Welfare, Alcohol, tobacco & and other drugs in Australia (National figure apportioned to Victoria based on population share escalated by a factor of 1.5/1.3, because 1.5% of Victorians use ATS, compared with 1.3% nationally. Real dollars)
[11] Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2019*, 71.
[12] Australian Institute of Health and Welfare, National Drug Strategy Household Survey 2019 (2020)
[13] Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2018-19*, 132.
[14] Ibid, 129.
[15] Australian Strategic Policy Institute, 'High Rollers' – A study of criminal profits along Australia's heroin and methamphetamine supply chains (2021).
[16] Drug precursor developments in the European Union, 2
[17] Vic police drug strategy, 6

regulations. The evolving production methods of drug manufacturers in this space necessitates a regulatory approach that similarly evolves.

The current list includes some pre-precursors however is not feasible to regulate every chemical that could feasibly be turned into precursors (because of the ability to break so many different substances down to their component atoms and reconstitute them into the types of chemicals prescribed in the Regulations). Therefore the list of prescribed precursors is designed to balance risk with burden, with a specific focus on those precursors or pre-precursors that are easiest to obtain at relatively low cost and in bulk quantities, and which are most easily able to be used to create ATS.

3 Development of options

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

3.1 Objectives

The objectives of the regulatory framework for precursors are to:

- reduce the social and economic costs associated with ATS by reducing the diversion of precursors to ATS production
- improve information available to assist law enforcement with enquiries and
- minimise the additional administrative burden imposed on businesses.

3.2 Approach to options development

As part of the RIS process, it is necessary to consider different options that could achieve the Victorian Government's objectives. The *Subordinate Legislation Act 1994* requires a RIS to consider "other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options".

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 substantial changes to the regulatory approach. Nevertheless, in keeping with the intent of the sunsetting process, and to outline for stakeholders the underlying rationale for preferring a regulatory approach to the alternatives, the analysis of options in this RIS reviews the relative merits of the current regulatory framework compared to alternative approaches to managing the risks precursors. A RIS must always consider the Base Case of doing nothing (in this case allowing the Regulations to sunset on 25 October 2021). The approaches below are assessed in Chapter 4 against this Base Case.

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

- adding to or removing from the list of prescribed precursors (Category 1 chemicals, Category 2 chemicals, Category 3 apparatuses)
- prescribing requirements for EUDs
- record-keeping requirements and
- storage requirements.

The current regulations are limited to:

- the list of prescribed precursors and
- EUD requirements (comprising only the name and address of receiver, proof of ID, name and quantity of precursor, proposed date of supply, intended use of the precursor).

The Act includes basic record keeping and storage requirements and allows for the Regulations to prescribe additional requirements, but the Regulations do not currently prescribe any such requirements.

Potential options for amending the existing regulations are therefore effectively limited to varying the list of prescribed precursors, EUD, ID or record-keeping requirements.

Variations between the status quo and the proposed Regulations

The proposed Regulations (Option 3 below) increase the number of prescribed precursors by 36 (see Appendix A), to reflect the expert advice of officials involved in the investigation of ATS production. The incremental impacts of this compared to the status quo are considered in Chapter 4.

While there are other feasible changes that could be made in the proposed Regulations, by amending the EUD, ID and record-keeping requirements, these requirements are already minimal. The only scope for change would be to introduce more stringent EUD, ID and record-keeping requirements, and the research and stakeholder consultation undertaken in preparing this RIS did not uncover a need to implement them.[18]

Limited benefits of increasing further the requirements of the Regulations

The main benefits of the Regulations (see Chapter 4) derive from their effectiveness in deterring the diversion of precursors and supporting Victoria Police in their investigations if and when diversion has occurred.

Victoria Police regard the information currently provided in EUDs as sufficient for their enforcement needs, and that requiring buyers to provide additional information (such as passport or business address) or requiring sellers to record additional details about a sale would not provide meaningful benefits to their enforcement activity or investigations. This 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 a diversion after that diversion has occurred, rather than forming part of a real-time monitoring system.

In terms of deterrence, requiring end users to provide additional information would not have a material impact on those looking to divert. For example, if someone is willing to provide fraudulent information to meet the current requirements then they will likely be willing and able to provide fraudulent information to meet expanded requirements.

In terms of storage requirements, the Act includes an outcomes-based requirement that category 1 precursor chemicals are stored in such a way as to prevent access to it by anyone other than by the supplier or person authorised by the supplier. DJCS is not aware of any cases of diversion that have indicated a need for storage requirements more strenuous than those already prescribed in the Act.

Increased costs associated with increasing further the requirements of the Regulations

Increased EUD, ID or record keeping requirements would also increase administrative burden for stakeholders, in ways which would vary between larger-scale precursors sellers and smaller businesses.

Stakeholders have advised that larger-scale sellers have systems that are able to easily record and store information required for the currently prescribed particulars relating to transactions. Stakeholder feedback indicated that changing these systems was simple when adding precursors (a matter of adding any new chemicals or apparatus to the list of items that trigger their systems to request prescribed particulars), but not for adding record keeping requirements (which could involve updating their entire systems with new fields or functionality). Smaller-scale sellers that use less sophisticated systems would face greater compliance costs associated with recording and storing additional information or documentation, as they are less likely to depend on automated digital systems.

Given the current regulatory framework and business practices in the sector, any additional requirements relating to EUDs, ID and/or record-keeping would increase administrative burden for stakeholders while providing little or no material additional benefits. This could discourage legitimate business activity in the sector. Some stakeholders also pointed to the reasonable nature of the regulatory requirements as one of the reasons they were happy to comply with the regulations even if their records were rarely inspected by police — imposing disproportionate costs on the sector could therefore risk eroding the legitimacy of the regulatory regime and reducing compliance among stakeholders.

[18] Stakeholders indicated no preference for changes to the Regulations beyond noting that ideally they would be harmonised with other jurisdictions. Any potential harmonisation is a policy decision to be made jointly with other jurisdictions. In the even that such a policy decision were made, the regulations would be able to be amended to reflect a new, nationally harmonised set of precursors.

3.3 Options

The options identified below are assessed against the Base Case: a counter-factual scenario used in impact analysis 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 regulations for the supply of precursors sunset on 25 October 2021 and no new approach, either regulatory or non-regulatory, is put into place. Stakeholder feedback suggests that in the absence of a formal regulatory approach industry would develop and administer its own code of conduct or control scheme for the supply of precursors, including recommended EUD and identification practices, and encourage voluntary compliance within the industry. (This was what happened in practice prior to the making of the Regulations in 2010.) In the Base Case, it is assumed that there is little or no police action or authority to enforce an industry code — this is a feature of Option 2.

As noted and explored in more detail in Chapter 4, while it is difficult to quantify, it is expected that in the base case there would be more diversion relative to the status quo given cases in which these regulations have helped prevent diversion of precursor chemicals and/or assisted other ATS-related enforcement activities, because these options would involve a less complete list of precursors and apparatus. Having even just a few such weak points in the control scheme in the base case or under an industry-led code of conduct would (compared to the proposed regulatory approach) create vulnerabilities that could easily be exploited at scale by organised crime groups. A small gap in the control scheme can lead to a large increase in diversion.

Options assessed against the Base Case in this RIS include:

- a government information and education campaign
- an industry-led code of conduct
- a regulatory approach, based on the status quo.

Option 1 – information and education campaign

Under Option 1 the current Regulations sunset and a non-regulatory approach is adopted to control the supply of precursor chemicals through information and education campaigns. Under this option, education campaigns would be targeted towards legitimate suppliers to raise awareness of the potential misuse of precursors and inform suppliers on the appropriate measures to take in suspicious circumstances.

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

Option 2 establishes a partnership between industry and government to develop arrangements to control the supply of precursors. Under Option 2, the current Regulations sunset and industry would develop its own code of conduct or control scheme for the supply of precursors in consultation with government. This may involve agreeing upon a list of prescribed precursors and EUD requirements as determined by industry. Given industry may lack specific knowledge of higher-risk precursors and the operation of clandestine laboratories, an industry-led code of conduct may include fewer precursors. Government would then implement and enforce the code of conduct. Breaches would be punishable by law.

This option is not feasible through just amending the Regulations. It would first require amendments to the Act itself, including a change to the regulatory approach overall, provisions to enshrine an industry-developed code as the relevant standards and requirements, and powers to enable those arrangements to be enforced. The government would then investigate or enforce non-compliance with the agreed arrangements.

Option 3 (preferred) – regulatory approach

Option 3 uses a regulatory approach to control the supply of precursors. The proposed Regulations will now prescribe 136 precursor chemicals and 12 precursor apparatus. Compared to the existing Regulations, the proposed Regulations will increase the overall number of prescribed precursors by 36. The changes comprise:

- 39 new chemicals added to the list of precursor chemicals in Schedule 1 (including 3 gases contained in cylinders which are being transferred to the chemical list in Schedule 1 from the equipment list in Schedule 3) and 4 new apparatus added to list of precursor apparatus in Schedule 3, and
- 3 chemicals and 4 apparatus which no longer pose a risk as precursor chemicals or equipment and which are to be removed from the Regulations.

Each of these options is analysed in the following chapter to evaluate the effectiveness and impact of the current regulatory framework since the Regulations were introduced. Design choices within the constraints of the regulatory approach prescribed by the Act are then considered, and their impacts assessed.

4 Options Analysis

4.1 Method of assessment MCA

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 4-1: MCA scale

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

4.2 Criteria

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

Table 4-2: MCA criteria

Benefit criteria	**Weighting**
Reduced diversion of precursors to illegal uses	25%
Record keeping requirements assist with police investigations	25%
Cost criteria	-
Cost to industry	25%
Cost to government	25%

Reduced diversion of precursors to illegal uses and *record keeping requirements assist with police investigations* receive equal weighting of 25%. They are two equally important mechanisms through which the Regulations help reduce the social and economic costs of ATS production and use.

The first of these relates to effectiveness in preventing precursors from being diverted, due to the deterrent effect of different approaches on any attempts to divert precursors and the reduction of opportunities for people to attempt to divert precursors. The reduction of diversion of precursors to illegal uses lowers the social and economic costs of ATS use by reducing the volume of ATS produced locally.

The second benefit refers to the effectiveness of the regulations in helping to investigate diversion after a suspicious transaction has occurred, which can feed back into reduced diversion activity in the future. For example, record keeping requirements reduce the costs of ATS by helping police to investigate and break up clandestine that have received precursors through suspicious transactions, reducing the volume of ATS available.

Reduced ATS use as a result of reduced diversion in general results in lower costs to the State associated with ATS-related harm, including healthcare and judicial costs.

Cost to industry and *cost to government* each receive a weighting of 25%. This is to reflect that a dollar of cost to industry should be equivalent to a dollar of cost to government. This only includes direct costs to industry and government, not indirect costs associated with ATS use such as healthcare and judicial costs, as these are included in the social cost of ATS.

4.3 MCA scoring

The table below presents the results of the MCA. As per the Better Regulation Victoria Guidance Note[19], 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).

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

Option 3 has the highest weighted score, and therefore is the preferred option.

Table 4-3: MCA scoring

Criteria	Option 1 (information and education campaign)	Option 2 (industry-led code of conduct)	Option 3 (regulation)
Benefits			
Reduced diversion of precursors to illegal uses	1	3	6
Record keeping requirements assist with police investigations	1	3	4
Costs			
Cost to industry (positive score is lower cost than Base Case)	0	-3	-2
Cost to government (positive score is lower cost than Base Case)	-1	-2	-3
Weighted score	**0.3**	**0.3**	**1.3**

4.4 Analysis of options

The discussion below compares the options against the evaluation criteria. As outlined in Chapter 3, the regulatory option (Option 3) assessed here is the proposed set of regulations, which leads to an increase in the number of precursors by 36. The difference in impacts between a regulatory approach with or without these additional prescribed precursors is expected to be relatively minor, and so is discussed in the context of the breakeven analysis in 4.5 below rather than being reflected in multiple regulatory options in this MCA.

Each option is scored relative to the Base Case where the current set of regulations for the supply of precursors sunset on the 25th of October 2021 and no new approach, either regulatory or non-regulatory, is put into place. The status quo (where the current regulations are reinstated exactly as they were) is not considered.

The scoring of each option against each criterion is explained below.

Table 4-4: Reduced diversion of precursors to illegal uses

Criterion	Option 1 (information campaign)	Option 2 (industry-led code of conduct)	Option 3 (regulation)
Reduced diversion of precursors to illegal uses	1	3	6

Option 1 (information campaign) receives a score of **1** for this criterion. It is marginally better than the Base Case in which no regulatory action is taken. Relative to a base case in which there was no regulation, Option 1 would reduce diversion relative to the base case by improving knowledge and awareness of precursors and relying on suppliers to decline or report suspicious transactions, meaning it will have a muted effect relative to Options 2 and 3. Considering that some stakeholders mentioned that the Regulations are not very well known among some suppliers, an education and awareness campaign would help inform those selling precursors about the potential risks and encourage voluntary reporting. However, the option lacks any power to compel suppliers to safeguard against the diversion of precursors by collecting an EUD, allowing purchasers to shop around until they find a supplier who does not request one. This would leave clandestine laboratories with a weak point to target as an option to source precursors. In addition, the ability for police to consistently draw on record keeping to enforce compliance and assist with investigations would be limited.

The impact of an awareness campaign is also likely to be greatest at the point in time it is conducted. This runs the risk of new entrants not being exposed to the information and a gradual deterioration of industry knowledge about the risks over time. A recurring campaign could be used to maintain effectiveness over time.

Option 2 (industry-led code of conduct with government enforcement) receives a score of **3** for this criterion. It is better than option 1.

This option is more effective at reducing diversion than option 1 because the code of conduct creates a positive obligation for suppliers to collect EUDs and provides a deterrence against not collecting them through government enforcement. Previous experience and stakeholder feedback suggest that the level of compliance with an industry-led code of conduct would be quite high.

In addition, although an industry-led list of prescribed precursors could potentially be updated more quickly than a government-regulated one, it would ultimately be less effective than option 3 as a list of prescribed precursors designed by industry would not be informed by the latest police intelligence and understanding of the trends in the illegal use of precursors. As such, there may additional diversion from precursors that industry does not have sufficient on the ground knowledge to include in the prescribed list.

Option 3 (regulation) receives a score of **6** for this criterion. It is better at reducing diversion than option 2.

This option requires purchasers to fill out an EUD and provide identification every time they buy precursors, presenting a deterrent to those who might divert the product to illegal uses. It is more effective than option 2 because a government designed list is better able to reflect the precursors that Victoria Police knows are currently being used and present the greatest risk. The proposed Regulations will increase the overall number of prescribed precursors by 36, modernising the scheme to keep up with the constantly evolving ATS production methods and further prevent diversion.

A best-practice list of precursors is maintained by the Precursor Working Group, a national advisory group on precursor controls. States and territories are encouraged to use the national best-practice list as the basis for prescribing their own precursor schedules.

The chemicals and apparatus proposed for addition to the Victorian regulations are derived from the national best-practice-list, and the Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020.

Table 4-5: Record keeping requirements assist police with investigations

Criterion	Option 1 (information campaign)	Option 2 (industry-led code of conduct)	Option 3 (regulation)
Record keeping requirements assist police with investigations	1	3	4

Option 1 (information campaign) receives a score of **1** for this option. It is marginally better than the Base Case.

In the non-regulatory option there would be no EUD requirements or penalties for not keeping EUDs. Record keeping would be limited to what is conducted as part of good business practice, but would be supported by the addition of the education and information campaign, which makes it better than the base case of no regulations or campaign. Some stakeholder feedback expressed concerns at the level of compliance with the Regulations, so an information campaign would help address those concerns. This campaign would result in additional record keeping and suspicious behaviour reporting relative to the Base Case. However, in the absence of formal regulatory requirements and the associated powers and investigative action from Victoria Police, there would be little deterrent for criminal organisations to infiltrate the industry to a significant extent. Records would be at greater risk of being fraudulent. For these reasons, Option 1 receives only a low positive score, representing a marginal improvement compared to the base case.

Option 2 (industry-led code of conduct with government enforcement) receives a score of **3** for this option. It is better than the Base Case.

Under the industry-led code of conduct, it is uncertain what approach industry would take to EUDs and record-keeping. However, it could be similar to the voluntary code of practice developed by the Plastics and Chemicals Industries Association (PACIA) and Science Industry Australia (SIA) prior to the Regulations first being implemented. The PACIA/SIA code included record keeping and documentation practices including EUDs, although the application varied by state and the code was voluntary.

If this option were implemented, the industry code of practice would be regulated so that anything in the code would be enforceable by the Victorian Government. To the extent that the EUD requirements chosen by industry are the same (or better) as what is required in the regulatory option, this option will be just as effective. Given that the previous code of practice contained the same EUD requirements as the Regulations, and these requirements are uncontentious, this option is likely to yield a similar result to option 3.

Option 3 (regulation) receives a score of **4** for this criterion. It is better than option 2 because the prescribed list of precursors would be more likely to align with the investigative needs of Victoria Police under a government-led regulatory regime. Furthermore, even with government enforcement of a voluntary code, regulated record keeping requirements would be a stronger tool to encourage and monitor compliance.

This option requires that suppliers obtain an EUD from all precursor transactions, unlike in the Base Case. These EUDs contain:

- the name and address of the receiver
- details of the receiver's proof of identity
- the name and quantity of the precursor to be supplied
- the intended use of the precursor, and
- the proposed date of supply of the precursor (category 1 chemicals only).

These EUDs must be kept for at least two years (category 2 chemicals and category 3 precursors) or five years (category 1 chemicals) as per section 80N of the Act. Without the regulations, there would be no prescribed information required for EUDs. In the event of a police investigation there would be no information available relating to the purchaser's identity or location to assist with police investigations. The prescribed EUD information in option 3 would give police a lead in the event of an investigation.

Table 4-6: Cost to industry

Criterion	Option 1 (information campaign)	Option 2 (industry-led code of conduct)	Option 3 (regulation)
Cost to industry	0	-3	-2

Option 1 (information campaign) receives a score of **0** for cost to industry. It involves the same costs as the Base Case.

There would be no additional compliance or financial burden for stakeholders under this option unless they choose to engage with the education and information campaign.

Option 2 (industry-led code of conduct with government enforcement) receives a score of **-3** for cost to industry. It imposes a small cost to industry.

The cost to industry under the code of conduct option is likely to be relatively small. Stakeholders have reported that the cost of complying with the existing Regulations is not onerous as many suppliers already collect much of the required information in their business-as-usual practices. As such, whether the list of prescribed precursors or EUD requirements are different under a regulatory or industry-led code of conduct with government enforcement is unlikely to significantly alter the cost of compliance. However, a code of conduct is likely to be marginally more costly to industry than a regulatory approach as there would be a cost associated with developing the code.

Option 3 (regulation) receives a score of **-2** for cost to industry. It imposes similar cost as option 2.

As mentioned, as stakeholders have reported that the cost of complying with the existing regulations is not high, the regulatory option would likely impose similar ongoing compliance costs as the code of conduct for most suppliers. However, option 3 will be less costly than option 2 as industry will not incur any initial costs associated with designing the code of conduct.

Table 4-7: Cost to Government

Criterion	Option 1 (information campaign)	Option 2 (industry-led code of conduct)	Option 3 (regulation)
Cost to government	-1	-2	-3

Option 1 (information campaign) receives a score of **-1** for cost to government.

There is a small administrative and marketing cost associated with developing and maintaining the education and information campaign, but this is likely to be less than the cost of developing regulations and enforcing compliance.

Option 2 (industry-led code of conduct with government enforcement) receives a score of **-2** for cost to government. It is slightly less costly than option 3.

Under the code of conduct, government and police play a role in inspecting EUDs and, monitoring and enforcing compliance with the code for the supply of precursors.

The cost of this would be greater than the Base Case as well as option 1. Government would still undertake some information and education activity, and is also likely to incur some additional costs in supporting industry to develop the code of conduct and in enforcing it.

Option 3 (regulation) receives a score of -**3** for cost to government. It is moderately more costly than the Base Case.

While the list of prescribed precursors and information required in an EUD may differ between options 2 and 3, the ongoing compliance and enforcement costs faced by government is unlikely to be meaningfully different. Police would likely conduct a similar number of EUD inspections and audits. Government will face additional costs associated with setting up the regulatory framework under this option, however, this is likely to be less costly than industry setting up the regulations because government is better placed to do it.

Annually, the Clandestine Laboratory Squad's Chemical Diversion Desk prospectively receives around 400 EUDs for review from wholesalers. These take between 30 minutes and two days (assumed average of half a day) to review. Assuming a value of staff time of $62 per hour, the cost to government is approximately $88,000.[20] Even if the number of EUDs the squad received increase by 50 per cent under Option 3 compared to the base case, the costs would be relatively low at approximately $132,000. This would also not be appropriate to attribute the entirely of this cost to the Regulations considering it forms part of the squad's broader compliance activities under the Act.

[20] VPS-3 wage rate ($35.80 per hour) 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*.

4.5 Impact analysis of preferred option (regulation)

The proposed Regulations would impose a burden on precursor wholesalers by requiring them to collect the information prescribed in the EUDs and to store it for a period of 2-5 years.

Stakeholder consultation in preparing this RIS suggests that the quantifiable compliance costs associated with the Regulations are relatively low, particularly on a per-transaction or per-company basis.

Many stakeholders regarded the compliance costs as so low (or integrated into their business as usual processes) that they were unable to quantify or even anecdotally quantify a proportion of their time and labour costs that could be attributed to compliance activities.

This RIS provides an illustrative estimate of the feasible total impact on the sector as a whole, comprising time spent:

- by buyers completing end user declarations and providing copies of identification, and
- by sellers receiving and processing these documents.

Compared to the existing regulations, the preferred option (regulation) will impose an additional administrative burden associated with complying with the expanded list of scheduled chemicals.

Feasible total costs of recording precursor transactions

Data revealed that the industrial and agricultural chemical wholesaling industry in Australia comprises 2,223 business. The size of this sector is used as an estimate of the number of businesses that would supply precursor chemicals. Approximately 30 per cent of these businesses are located in Victoria, resulting in an estimated 660 businesses being impacted by the regulations.[21]

Based on research and stakeholder feedback it is estimated that under the current Regulations each of these businesses receives 10 EUDs per week on average, and that each EUD takes no more than 5 minutes to complete and record at a resource cost of $52 per hour.[22] This equates to a total cost industry of $1.4m per year for all businesses in Victoria. Purchasers of precursors also bear an administrative burden due to EUD requirements. This burden is likely to be equivalent to that faced by supplying businesses, and as such is also estimated at $1.4m per year. This suggests a feasible total cost of recording transactions for prescribed precursors of around $2.8 million per year, before accounting for costs that would have been incurred by the sector in the Base Case.

The proposed Regulations involve expanding the existing list of prescribed precursors, and business will also have to update their systems to account for this. Stakeholder consultation suggests that the process of updating systems will take at most two hours per business at the above rate, resulting in a once-off cost per business of $103, or $68,000 for all Victorian businesses.

As a conservative estimate, in the absence of quantitative data regarding the volume of transactions for newly prescribed chemicals, this impact analysis assumes that the volume is proportionate to that for existing precursors, implying around an additional 4 weekly transactions.[23] While there is a lack of quantitative data about transactions of specific precursors, stakeholder feedback indicates that the sale of precursors typically represents only a small amount of a typical business' activity. DCJS invites any stakeholders with further information or views on the likely transaction volumes to provide this feedback to the Department through the RIS consultation process.

This suggests that increasing the number of precursors by 36 will (conservatively) increase total feasible costs by $1.2 million per year compared to the status quo, and result in a total feasible costs of recording transactions (including costs for both purchasers and suppliers or precursors) for the proposed list of precursors of around $4 million per year.

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[21] IBISWorld 2020, *Industrial and Agricultural Chemical Product Wholesaling in Australia* (F3323).
[22] ABS, Clerical and Administrative Worker median income ($29.35 per hour) 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*.
[23] Based on the overall number of additional precursors being an increase of around 31% in the number of precursors prescribed, and rounding up to allow for an up to 40% increase in transaction volume.

Costs attributable to the proposed Regulations

Stakeholder consultation found that the information recorded for precursor transactions was neither costly nor time consuming to collect, and in the Base Case would be done by many businesses either as standard practice or in compliance with an industry code of conduct, and that this was particularly true for larger businesses. This is consistent with the observation that a voluntary code of practice which is similar to the preferred option was enshrined in the 2010 regulations. Therefore it is likely that a significant number of suppliers would adhere to these requirements in the absence of regulations, and the burden of remaking these regulations is only a small fraction of the feasible total cost of recording transactions.

The costs of recording transactions attributable to the proposed Regulations is estimated to be $0.8 million per year, being 20% of the total feasible costs (including around $240,000 per year attributable to changes to the current regulations). This estimate is based on the expectation, informed by consultation with stakeholders and Victoria Police, that in the Base Case, without the proposed Regulations, this information would be recorded as part of businesses' record-keeping practices for around 80 per cent of transactions. This is based on the assumption that:

- larger firms (those with more than $5 million in annual turnover) comprise around 60% of the revenue in the market, based on ABS data, and that smaller firms (those with less than $5 million in annual turnover comprise around 40% of the revenue in the market[24]
- these market shares are a proxy for the proportion of total precursor transactions that larger and smaller firms undertake (informed by stakeholder feedback and advice from Victoria Police that larger firms routinely handle more prescribed precursor transactions than smaller firms)
- all transactions by businesses with turnover of more than $5 million per year would reflect record-keeping practices required by the regulations even if there were no regulations in place, and
- 50% of transactions by businesses with turnover of less than $5 million per year would reflect record-keeping practices required by the regulations even if there were no regulations in place.

The last of these assumptions is considered particularly conservative given that stakeholder feedback suggests the majority of businesses would undertake similar activities required by regulations even in the Base Case. This means that the last of the above assumptions (that records equivalent to those required by regulations would not be kept in 50% of transactions by smaller businesses) is a worst-case scenario. This assumption is used to provide a conservative estimate of the regulatory burden imposed on businesses by the proposed Regulations. It should not be interpreted as suggesting any expectation of a widespread lack of record-keeping or compliance among smaller businesses.

Breakeven analysis

In cases where the costs of a regulatory proposal are known, but the benefits are harder to determine with confidence or accuracy, it is appropriate to use breakeven analysis to determine the merits of the proposal. In the case of the proposed Regulations, case studies and examples provided by Victoria Police have shown that these regulations have prevented or assisted in the investigation of the diversion of significant quantities of precursors. For example, Victoria Police reported one instance in which an equipment supply company ordered a large piece of commercial-grade drug manufacturing equipment for a member of the public. At the point of sale, the individual did not want to complete an EUD so walked away from the transaction. The company reported the matter to the Chemical Diversion Desk at Victoria Police.

Following this, a 6-month investigation identified significant links to organised crime entities and contact with persons in South America. Search warrants were executed resulting in the location and seizure of four clandestine laboratories, 20 kilograms of Methylamphetamine, 300 grams of Cocaine, five litres of 1,4-Butanediol, one handgun, encrypted 'cipher' phones, and $10.2 million cash and $6 million worth of real estate and vehicles. Four alleged offenders have been arrested and charged in relation to this matter. While it is difficult to attribute these to specific cases of ATS-related harm, the estimated record-keeping costs attributable to the Regulations of $0.8 million suggest that if even just 0.07% of total ATS-related harm were avoided due to these regulations, they would break even and, if they prevented any more than that, they would yield net social benefit. On this basis, remaking prescribing the expanded list of prescribed chemicals is warranted.

[24] Based on total turnover attributable to larger firms, which comprise around 25% of the businesses in the sector but account for around 60% of total turnover for the industry.

5 Impact on competition and small business

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

5.1 Competition

As Victoria is a party to the Competition Principles Agreement, regulation in Victoria is required to include a competition assessment.[25] The Competition Principles Agreement sets out that any new primary or subordinate regulation should not restrict competition except where:

- restriction of competition is required to meet the government's objectives; and
- the benefits of the restriction outweigh the costs.

Restrictions on competition can be identified where there will be changes to the way a market functions due to the implementation of the proposed regulation. Specifically, restriction can occur where:

- the number or range of suppliers is limited
- the ability of supplies to compete is limited
- the incentive of suppliers to compete vigorously is reduced.

Any affirmative answers to the following questions indicate that the regulation is considered to restrict competition:

Table 5-1: Competition assessment questions

Test question	Answer	Explanation
Is the proposed measure likely to limit the numbers of producers or suppliers to: • only one producer? • only one buyer? • less than four producers?	No.	An estimated 660 businesses would be impacted by the proposed Regulations.[26] Given that stakeholders have reported that the costs of complying with the existing regulations is low, it is unlikely that the proposed Regulations would materially impact the number of suppliers in the industry.
Would the proposed measure restrict the ability of businesses to choose their output, price or service quality?	No.	The Regulations impose obligations on suppliers to collect and store certain information from purchasers of prescribed precursors. The Regulations do not impact their ability to choose their output or price. In some instances, the Regulations may detrimentally affect a business' quality of service in the sense that they are required to collect certain information, which may be seen as a reduction in service quality by some customers. Stakeholders report that, under the existing regulations, some frequent customers would occasionally

[25] Better Regulation Victoria, '*Victorian Guide to Regulation*' (November 2016).
[26] IBISWorld 2020, *Industrial and Agricultural Chemical Product Wholesaling in Australia* (F3323).

Test question	Answer	Explanation
		get disgruntled about having to regularly complete an EUD. Similarly, some reported instances of new customers deciding not to proceed with a purchase after being asked to provide identification for an EUD. However, stakeholders reported these situations as infrequent and among customers who are not vital to their business. Additionally, many would collect the same information for the sale of these products in the absence of the Regulations.
Would the proposed measure discourage entry into the industry by new firms/individuals or encourage exit from existing providers?	No.	The proposed Regulations are unlikely to have any impact on the entry and exit decisions of medium and large suppliers of precursors. Feedback from stakeholders suggest that these businesses would incur a small upfront cost associated with updating the precursors for which they are required to collect EUDs and that compliance would largely be monitored by automated systems thereafter.
Would the proposed measure impose higher costs on a particular class or business or type of service (e.g. small business)?		The Regulations may impose a marginally higher cost on smaller suppliers of precursors for whom compliance with the existing regulations is reportedly lower and inventory fulfillment systems may not be as sophisticated. However, considering that small businesses are likely responsible for a smaller proportion of precursor transactions and that the costs of complying with the Regulations is low, the cost on small suppliers is unlikely to be materially higher.
Is the proposed measure likely to make it more difficult for consumers to move between or leave service providers?	No.	Consumers of prescribed precursors have identical obligations to provide information for EUDs irrespective of which supplier they purchase from. As such, the Regulations do not create any barriers that make it more difficult for consumers to move between suppliers. In addition, there is nothing in the Regulations which requires a consumer to stay with a certain supplier under any conditions.
Would the proposed measure affect the ability of businesses to innovate, adopt new technology or respond to the changing demands of consumers?	No.	Being confined to requiring the collection of information for the sale of prescribed precursors, the proposed Regulations have no impact on the products that businesses can sell, how they conduct themselves in the market or their ability to innovate within the market.

It is necessary to articulate the objective that is achieved through restriction of competition in the regulation and assess other reasonable means of achieving the objectives without competition restriction. Demonstration of a specific link is required to sufficiently meet the competition assessment requirements. Given that the proposed Regulations do not result in any affirmative answers to the competition assessment questions, they do not significantly restrict competition.

5.2 Small business impact

To ensure the impacts of regulation on small business are examined appropriately, an assessment of the effects on small business is desirable. This aims to ensure that regulation does not impact business growth and productivity unreasonably, especially that of small businesses.

Small businesses can experience disproportionate impacts from regulation due to limited resources for interpretation of updates in compliance requirements, and the cumulation of different requirements. The lack of economies of scale may affect these businesses' ability to comply with different options. Small businesses with

turnover of under $2 million are estimated to represent 75% of the businesses in the chemical produce wholesaling industry.[27]

The stakeholder consultation process revealed that, under the existing regulations, it is generally smaller businesses who are more likely to be unaware of the Regulations and, as a result, not comply with them. This suggests that small business may face a higher cost associated with identifying or understanding their obligations under the Regulations. However, in many instances the upfront costs associated understanding the requirements of the Regulations is minimised by Victoria Police taking a proactive role in educating businesses about their obligations, and through industry-led efforts to raise awareness of the risks and the regulatory regime among their members.

The framework of the proposed Regulations is identical to the existing regulations, with additional prescribed precursors. This assists in minimising any burden faced by small businesses by allowing them to continue complying with the Regulations as they have in the past.

The stakeholder consultation process revealed that small businesses may face marginally higher costs associated with complying with the proposed Regulations due to possessing less sophisticated electronic sales systems. While large businesses report possessing systems that allow them to automatically flag sales, small businesses may only have a slower, more mechanical system for this process. However even if this were the case, the additional burden on small businesses will be minimal, and possibly even less than larger businesses if they do not transact many precursors.

[27] IBISWorld 2020, *Industrial and Agricultural Chemical Product Wholesaling in Australia* (F3323).

6 Implementation, evaluation and enforcement

6.1 Implementation

The results of the MCA show that the preferred option is Option 3. This conclusion is made on the basis that it is significantly better than the other options at achieving the objectives of the Act, but does not impose excessive cost burden on industry or government.

The actions in Table 6-1 will need to take place leading up to the sunsetting date (25 October 2021) to implement the preferred option.

Table 6-1: Implementation and evaluation actions

Action	Responsible party	Timeframe
Finish drafting new regulations	The Department (legislative arm)	June-July 2021
RIS release	The Department	June 2021
Consultation period	The Department	June - July 2021
Submissions considered	Minister	July - August 2021
Recommend and make Regulations	Governor in Council	September – October 2021
Proposed Regulations come into effect	Governor in Council	October 2021

Communication

Continued communication and education are vital to driving compliance with the Regulations.

As noted in Chapter 4, some stakeholders expressed concerns that the level of compliance with the existing regulations may be low. The proposed addition of 36 prescribed precursors poses a valuable opportunity to engage with the sector and raise awareness of these Regulations and their purpose. Engagement relating to the new Regulations will be undertaken by Victoria Police with assistance from the Victorian Government as required.

Victoria Police currently takes a proactive communicatory role by engaging with suppliers and ensuring they understand and are complying with the existing regulations. In addition to building relationships with suppliers and conducting site visits, Victoria Police has also previously engaged with the industry by attending industry conferences.

6.2 Evaluation

The success of the chosen option will be evaluated by assessing to what extent it has addressed the problem statement in this RIS and government's objectives, namely:

- reduce the social and economic costs associated with ATS by reducing the diversion of precursors to ATS production
- improve information available to assist law enforcement with enquiries and
- minimise the additional administrative burden imposed on businesses.

Given these objectives, the following indicators will be used to evaluate the success of the regulations.

The estimated use and social cost of ATS in Victoria.

NWDMP and AIHW reports provide authoritative estimates on the use and social cost of ATS in Victoria. Monitoring a time series of these reports before and after the regulations are made will provide an indication of their effectiveness. If these measures do not increase significantly, this could indicate that the regulations are supporting this first objective.

The number of clandestine laboratories detected, and effort required from Victoria Police to detect them.

An increase in the number of clandestine laboratories detected could be an indication (amongst other things) that the regulations are achieving their objective of supporting law enforcement with their enquiries. This could be reaffirmed by regular engagement with Victoria Police where the efficacy of the Regulations is discussed.

The rate industry of compliance with the Regulations.

An increase in the proportion of suppliers collecting and storing EUDs would be a positive indicator of success. Victoria Police currently undertake inspection and engagement activities in this space and would be well placed to monitor compliance. Stakeholders suggested that more frequent engagement by Victoria Police with the sector and routine checking of records could help support understanding and compliance in the few cases where small or new businesses were unaware of their obligations.

6.3 Enforcement

Enforcement of the Regulations and the Act is undertaken by Victoria Police. Victoria Police have a role in inspecting EUD records and encouraging compliance. This is achieved through regular engagement with suppliers, site visits and, where possible, tracing precursors found in clandestine laboratories back to their point of sale. Police can issue a penalty in the event of non-compliance with the EUD, record keeping and storage requirements. This is identical to the enforcement/monitoring role of Victoria Police under the status quo.

Victoria Police report that, in cases where they inspect EUDs, they are typically completed and kept in accordance with the requirements of the Regulations. Suppliers who fail to comply with their obligations under the Regulations generally do so due to not knowing about them or not knowing they apply to the sale of their products. These are generally smaller wholesalers and new entrants to the industry. Victoria Police report that their industry engagement activities are effective at educating these businesses. Compliance and Victoria Police enforcement is not expected to significantly change under the new Regulations.

7 Stakeholder engagement

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

- Accord Australasia
- Chemistry Australia
- Merck
- Science Industry Australia
- Thermo Fisher Scientific
- Victoria Police
- Westlab

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.

Appendix A

This appendix outlines proposed additions and removals of precursors from the Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2021.

Schedule 1

Additional chemicals from the national best practice list

	Proposed additions
1.	Acetophenone
2.	Acetophenone oxime
3.	Acetyl chloride
4.	N-Acetylephedrine (including salts and isomers)
5.	N-Acetylpseudoephedrine (including salts and isomers)
6.	alpha-Methyl-3,4-methylenedioxyphenylpropionamide (MMDPPA)
7.	alpha-Phenylacetoacetamide (APAA)
8.	Ammonia, anhydrous (contained in a gas cylinder)
9.	4-Anilino-N-phenethylpiperidine
10.	4-Anilinopiperidine
11.	Aniline
12.	Anisaldehyde
13.	Benzoquinone
14.	1-Benzyl-4-piperidone
15.	Chloroacetone
16.	Chloroephedrine (including salts and isomers)
17.	Chloropseudoephedrine (including salts and isomers)
18.	Ergocristine (including salts)
19.	Fumaric acid
20.	Helional
21.	Hydrogen (contained in a gas cylinder)
22.	Hydrogen chloride (contained in a gas cylinder)
23.	1-Hydroxycyclopentyl-(o-chlorophenyl)-ketone N-methylimine HCl (HCPKM)
24.	Hydroxylamine (including salts and solutions)
25.	l-Phenylacetylcarbinol (L-PAC)
26.	N-Methylalanine (including salts and isomers)
27.	3,4-Methylenedioxyphenyacetonitrile
28.	3,4-Methylenedioxyphenyl-2-nitropropene

29.	Methyl 3-[3',4'-(methylenedioxy)phenyl]-2-methyl glycidate (MMDMG)
30.	Methyl 3-phenyl-2-methyl glycidate
31.	N-Phenethyl-4-piperidone (NPP)
32.	1-Phenyl-1,2-propanedione
33.	1-Phenyl-2-propanone bisulfite
34.	4-Phenyl-3-oxobutanoic acid
35.	4-Piperidone
36.	Propionyl chloride
37.	Sodium 2-methyl-3-(3,4-methylenedioxy)phenyl glycidate
38.	Sodium 2-methyl-3-phenyl glycidate

Additional chemicals from the Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020 (Cth)

	Proposed additions
1.	Methyl alpha-phenylacetoacetate (MAPA)

Chemicals added comprise 38 precursor chemicals from the national best practice list of precursor chemicals maintained by the national Precursor Working Group, and one additional precursor chemical from the list of precursors prescribed by the Commonwealth in 2020 under the Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020 (Cth).

Proposed removals

	Proposed removals
1.	Gamma Hydroxybutanoic acid (GHB)
2.	Methcathinone

In Victoria, these drugs are currently listed both as precursor chemicals under the Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010 and as drugs of dependence under Schedule 11 of the **Drugs, Poisons and Controlled Substances Act 1981**. They are not included in the national best practice list of precursor chemicals. Following consultation with Victoria Police, the Department of Justice and Community Safety (DJCS) is not aware of any legitimate industrial uses that would require these drugs to continue to be prescribed as precursor chemicals. They will continue to be prohibited in Victoria as drugs of dependence.

Schedule 2

Proposed removals

	Proposed removals
1.	Phenylalanine

The above chemical is not included in the national best practice list of precursor chemicals. Following consultation with Victoria Police, DJCS understands this chemical is not well suited to use in clandestine laboratories as the chemical process necessary to convert it to amphetamine and methylamphetamine relies on unusual chemicals, involves multiple steps, is not easy to scale up and requires specialised equipment and expertise to be carried out successfully. Accordingly, there is no need to retain this chemical in Schedule 2

Schedule 3

Additional apparatus from the national best practice list

	Proposed additions
1.	Separating funnels
2.	Encapsulation apparatuses
3.	Hot plates with magnetic stirrer function
4.	Mechanical stirrers including magnetic bar drives and overhead laboratory units

The above items are included in the national best practice list of precursor equipment

Apparatus proposed to be removed

	Proposed removals
1.	Ammonia gas cylinder
2.	Hydrogen gas cylinder
3.	Hydrogen chloride gas cylinder
4.	Methylamine gas cylinder

The above items are not included in the national best practice list. Gas cylinders differ functionally from other apparatus in the list in that they are chemical containers rather than scientific laboratory equipment used in the chemical conversion process. The national best practice list places these gases (when contained in a cylinder) in the chemicals list. In order to achieve consistency, it is therefore proposed to remove them from Schedule 3. Ammonia, hydrogen and hydrogen chloride contained in gas cylinders will continue to be covered by the Regulation as they are among the 39 chemicals being added to Schedule 1, methylamine is already listed and will remain in Schedule 2.

Limitation of our work

General use restriction

This report is prepared solely for the internal use of the Department of Justice and Community Safety. This report is not intended to and should not be used or relied upon by anyone else and we accept no duty of care to any other person or entity. The report has been prepared for the purpose preparing a Regulatory Impact Statement report related to Control of Precursors. You should not refer to or use our name or the advice for any other purpose.

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