



Level 5, 1 Macarthur Street
EAST MELBOURNE VIC 3000

03 7005 9772
contact@betterreg.vic.gov.au
betterregulation.vic.gov.au

Mr Bill Kyriakopoulos
Deputy Secretary, Police, Community Safety and Communications
Department of Justice and Community Safety
Level 26, 121 Exhibition Street
MELBOURNE VIC 3000

19 July 2021

Dear Mr Kyriakopoulos,

REGULATORY IMPACT STATEMENT FOR PRECURSOR SUPPLY REGULATIONS 2021

I would like to thank your staff at the Department of Justice and Community Safety (the Department) for working with the team at Better Regulation Victoria on the preparation of a Regulatory Impact Statement (RIS) for the Precursor Supply Regulations 2021 (the proposed Regulations)

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 19 July 2021 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background

Precursors are chemicals and apparatus that have many legal uses, for example, in producing medicine, plastics and fragrances. However, precursors can also be used to make amphetamine-type stimulants (ATS), a type of illegal drug. In each Australian jurisdiction, legitimate sales of precursors are regulated to prevent diversion into illegal drug production.

In Victoria, precursors are regulated under the *Drugs, Poisons and Controlled Substances Act 1981* (the Act). The Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010 (the current Regulations) give effect to the Act by prescribing chemicals or apparatus as precursors that can be used in illegal

production of ATS. In addition, the Regulations prescribe identification and end-user declaration (EUD) requirements in the wholesale market for those precursors. The two main (legal) stakeholders impacted by the Regulations are businesses involved in the manufacture and sale of precursor chemicals and/or equipment, and businesses who legitimately purchase and use precursor chemicals and/or equipment. These businesses include chemical companies, research facilities, laboratories, and scientific equipment manufacturers.

The Regulations are due to sunset on 25 October 2021. The Department explains in the RIS that if the Regulations are not replaced, the effectiveness of the regulatory framework will be severely compromised, leading to potentially greater production of ATS and harm from drugs. In addition, industry (scientific and chemical industry as well as research stakeholders) may suffer reputational damage if diversion to illegal drug manufacturing increases.

Selecting the Preferred Option

In the RIS, the Department explains that during stakeholder consultations with industry and Victoria Police, stakeholders supported the broad regulatory framework and did not suggest changing it. The Department has reviewed the Regulations and proposes *removing* three precursor chemicals and four apparatus that no longer pose a risk, based on advice from Victoria Police and proposes *adding* 36 precursor chemicals and four apparatus.

These additions come from either:

- the best-practice list produced by the National Precursor Working Group; or
- the Commonwealth's Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020 (Cth).

The new Regulations will continue requirements for users to obtain an EUD for all precursor transactions. 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, which are higher risk).

Suppliers must keep EUDs for at least two years for lower-risk precursors (categories 2 and 3) and for five years for higher risk precursors (category 1). These records are intended to assist police in obtaining leads in the event of a criminal investigation.

The Department estimates that the total cost of these new Regulations is \$1.6 million annually compared to a base case where the Regulations are not remade. It notes that it is estimated by the Australian Institute of Health and Welfare that the

social cost (law enforcement, healthcare, decreased productivity) of ATS use in Victoria was \$1.1 billion in 2018-19. It explains that even if 0.15 per cent of ATS-related harms were prevented, the Regulations would breakeven and the benefits would equal the costs.

Analysis of Alternative Approaches

In addition to analysing the impacts of the proposed Regulations, the Department undertakes a multi-criteria analysis (MCA) to assess the proposed Regulations against two alternative approaches (options) to the Regulations. The Department explains that the purpose of the MCA is to outline why the proposed Regulations are its preferred approach and it has not seriously considered implementing the alternative options.

The three options discussed are:

Option One: Information and education campaign

This Option would replace any regulatory intervention with an information and education campaign and no alternative regulations would be introduced. The Department would therefore adopt a non-regulatory approach based on information and education campaigns.

Option Two: Industry-led code of conduct with government enforcement

This Option would rely on industry developing its own code of conduct for precursor supply in consultation with the Government. This could involve industry agreeing on a list of restricted precursors and EUD record-keeping requirements. The government would then penalise breaches of this code.

Option Three: the proposed Regulations (*preferred*)

The Department's preferred approach involves a robust regulatory approach to control precursor supply. As noted above, this includes remaking the Regulations and adding 41 precursor chemicals and four apparatus. Three precursor chemicals and five apparatus will be removed.

In the MCA, each option is assessed against the following criteria, which are equally weighted:

- Reduced precursor diversion to illegal purposes
- Record keeping requirements to assist police investigations
- Cost to industry
- Cost to government.

The Department explains its reasoning for Option Three as follows:

1. A government-designed list is better able to reflect the precursors that Victoria Police knows are currently being used and present the greatest risk.

It would provide a greater deterrent against diverting precursors for illegal use than a voluntary code of conduct.

2. The record-keeping requirements under a government-led scheme would be a stronger tool for monitoring compliance than a voluntary code.
3. Record-keeping in regulations will not be onerous because suppliers already collect much of the required information in EUDs in their business-as-usual practices.
4. While a voluntary-led code of conduct and regulation would impose similar compliance and record-keeping costs, regulation is marginally more cost-effective. This is because it will likely be more costly for industry to develop a voluntary code than for the Government to develop regulations.
5. An industry-led code of conduct would reduce some costs to the Government. However, ongoing compliance and enforcement costs faced by the Government are unlikely to be meaningfully different. Victoria Police would likely conduct a similar number of EUD inspections and audits.

Implementation and Evaluation

In the RIS, the Department notes that the proposed Regulations impose a low burden on industry and the Government. The Department explains that Victoria Police will communicate with stakeholders about the 36 new chemicals and four apparatus in the proposed Regulations.

The Department explains that Victoria Police currently takes a proactive role to communications and will continue to do so. It engages with suppliers and ensures that they understand and are complying with the Regulations. Activities include conducting site visits and building relationships with suppliers.

The Department commits in the RIS to evaluating the effectiveness of the proposed Regulations by:

- monitoring the estimated use and social cost of ATS in Victoria
- recording the number of clandestine laboratories detected, and the effort required from the Victoria Police to detect them; and
- assessing the rate of industry compliance with the Regulations.

Should you wish to discuss any of the issues raised in this letter, please do not hesitate to contact my office on 03 7005 9772.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation