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Mr Bill Kyriakopoulos
Deputy Secretary, Police, Community Safety and Communications
Department of Justice and Community Safety
Level 26, 121 Exhibition Street
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26 July 2021

Dear Mr Kyriakopoulos

REGULATORY IMPACT STATEMENT FOR CONTROL OF WEAPONS 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 Control of Weapons Regulations 2021.

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 26 July 2021 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background

The *Control of Weapons Act 1990* (the Act) regulates weapons other than firearms as well as body armour. The Act refers to four categories of weapons:

- Prohibited weapons: prescribed items that cannot be possessed or used without the Chief Commissioner's Approval or a Governor in Council Exemption Order.
- Controlled weapons: prescribed items that can be possessed, carried and used for legitimate purposes but may pose a danger to the community.

- Dangerous articles: any prescribed article which is carried with the intention of being used as a weapon or adapted so as to be capable of being used as a weapon. These items can only be possessed in a public place with a lawful excuse.
- Body armour: a prescribed garment or item that is designed, intended or adapted for the purpose of protecting the body from the effects of a weapon.

The Control of Weapons Regulations 2011, made under the Act, are due to sunset on 29 November 2021. The Regulations prescribe specific items to be in one of the four categories discussed above and, therefore, subject to requirements in the Act. The Regulations also prescribe record-keeping requirements for prohibited weapons and set fees for approval to possess prohibited weapons. If the Regulations were to sunset without being replaced, no weapons would be prescribed. The Department explains that the regulatory framework would not operate effectively, and weapons would be inadequately controlled.

Options Development and Analysis of the Preferred

In the RIS, the Department notes that during stakeholder consultation, no stakeholders proposed major changes to the items prescribed in the Regulations or to record-keeping requirements. Nevertheless, the Department proposes a small number of minor adjustments to the current regulations, aimed at improving the way the framework is administered, implemented, and enforced. These changes include:

- Redefining body armour to explicitly exclude a helmet or item used to protect the face, eyes or ears. The Department explains this will increase consistency with other jurisdictions and better reflect how the framework is currently administered.
- Requiring sellers of prohibited weapons to record the ABN/ACN/ARBN/IAN of the purchaser. The Department states that the impact of this change will be minimal as sellers typically collect this information already.
- Expanding the list of valid documents that a purchaser of a prohibited weapon can use to prove their identity to a seller.
- Updating record keeping requirements of police searches to align with the powers under the Act.

The Department explains that these changes will ensure sound administration of the regulatory system and streamline implementation and enforcement.

The total costs of the proposed Regulations are estimated to be \$1.2 million per year. This includes costs associated with applications to use or sell prohibited weapons, record keeping requirements and application fees. The incremental cost of the proposed Regulations relative to the status quo is estimated to be about \$150,000, due to the additional record keeping requirements. The Department discusses the benefits of the proposed Regulations, including preventing the dangerous or inappropriate use of weapons, promoting community safety and enabling Victoria

Police to effectively enforce the Regulations. A break-even analysis is used to assess the required reduction in weapons-related deaths for the benefits of the proposed Regulations to break even with the costs. Using a value of a statistical life of \$4.7 million, it is estimated that if two weapons-related deaths were avoided over ten years, then the benefits of the proposed Regulations would exceed 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 these alternative options. The alternative options would require legislative change.

The three options assessed in the MCA are:

- **Option One: Negative licensing scheme**

Under Option One, no weapons are prohibited, but people who breach requirements or commit relevant offences could be prohibited from using or gaining access to non-firearms weapons in future. This option would require setting out requirements and/or standards that if breached could result in a person being issued with a negative licence and conditions that a licence would impose (such as banning them from purchasing certain weapons and/or the actions that could be taken by the person for the ban to be revoked).

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

Under Option Two, industry would develop and administer its own code of conduct or control scheme for non-firearm weapons in consultation with the Government. This would involve industry organisations and community groups who use non-firearm weapons for occupational, recreational, cultural, or religious purposes to agree upon a list of prescribed weapons, record keeping requirements and fee structures. For example, industry members could include community groups such as martial arts clubs, businesses who sell non-firearms and cultural or religious organisations who use ceremonial weapons such as Sikh communities. These industry organisations would be the sole or primary administrator of measures to mitigate risks. The Government would be required to provide legislative backing to allow the industry agreements to be enforced.

- **Option Three: Proposed regulatory approach** (Preferred Option)

Under Option Three, a regulatory approach would be used to control non-firearm weapons, within the current specifications of the Act. This would

involve remaking the Regulations with the minor adjustments outlined above and incorporating advice from expert stakeholders.

In the MCA, each option is assessed against the following criteria:

- Reduction in deliberate or accidental weapon-related harm and public distress (50 per cent).
- Cost of enforcement and compliance for industry and government (40 per cent).
- Discouragement of legitimate use (10 per cent).

The Department explains that it prefers Option Three because it believes that it is the most effective in reducing weapons-related harm and public distress. It states that this is because the Regulations provide a more credible deterrent of crime and can be tailored to prescribe weapons of concern to Victoria Police. It also explains that these additional benefits of Option Three outweigh the additional costs relative to Options One and Two.

The Department explains that while Option One has only minor costs (small costs for compliance and enforcement and it will not discourage legitimate use of non-firearm weapons), it does not sufficiently reduce the risk of weapons-related harm and public distress. Option Two is preferred to Option One as it entails greater restriction on the access to weapons, however, some businesses and organisations may not be well placed to develop and administer a code of conduct.

Implementation and Evaluation

In the RIS, the Department explains that relative to the status quo, the proposed Regulations are not expected to have a material impact on stakeholders. It notes that the implementation, enforcement and administration of the Regulations will continue to be undertaken by Victoria Police and current mechanisms will continue to be used. Enforcement and compliance-activities will continue to include:

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

The Department states that the small changes to the Regulations will be communicated to stakeholders by Victoria Police as part of routine stakeholder engagement with industry organisations and community groups who use non-firearm weapons for occupational, recreational, cultural, or religious purposes. It

is also explained that Victoria Police will raise awareness of the changes through the Victoria Police website and newsletter.

The Department explains that it will evaluate the preferred option by measuring weapons-related harm in Victoria over time, the rate of compliance and ongoing stakeholder feedback on the administration and implementation of the Regulations. It does not propose a formal evaluation given the burden of the proposed Regulations is minimal.

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