

Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010

Regulatory Impact Statement

April 2010



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Executive Summary

Introduction

The Victorian Government has recognised that the production of amphetamine-type stimulants (ATS) is typically linked to criminal activities and the abuse of ATS has resulted in societal costs imposed on the community, businesses and the government. These costs can be partly attributed to the diversion of licit precursor chemicals to illicit drug production.

The Victorian Government realises the importance of having regulatory measures at the start of the illicit drug production / distribution chain so as to support tightened law enforcement activities at the end of the production chain. This is especially so when Victoria makes up roughly 30-35 per cent of the precursor chemical and equipment wholesale and manufacture market. Therefore the Victoria Government is introducing a new regime to regulate the supply of precursor chemicals and equipment.

Problem to be addressed

ATS are a group of highly addictive psychostimulant drugs that includes methamphetamine, ecstasy (MDMA) and some pharmaceuticals, such as dexamphetamine and Ritalin. In Australia, the main ATS used are methamphetamine and ecstasy.

Between 1998 to 2007, Australia and New Zealand (the Oceania region) contributed to almost half the number of clandestine laboratories detected worldwide, with the majority of seizures from Australia. Australia's consumption of ATS has also been ranked the highest compared to the rest of the world. In Victoria, almost half a million people aged 14 year and over have tried methamphetamine, cocaine and/or ecstasy in 2007 and that stimulant use is most prevalent among young people.

While there is little available data beyond anecdotal evidence to demonstrate the link between local ATS production and local ATS consumption in Victoria, it has been reported that the availability of precursor chemicals for local clandestine laboratory productions had increased, leading to wider distribution of ATS in more affordable purchase units. The high number of clandestine laboratory detections in Victoria also suggests that the supply of illicit drugs in Victoria is being served by local production capability within the state.

The manufacture of ATS requires a range of chemicals, including reagents and solvents. Diversion may occur at any point in the supply chain as the required chemicals can be legally purchased from a commercial chemical manufacturer, importer or distributor or, in the case of pseudoephedrine, a local pharmacist. While there are already regulations and strategies in place to control diversion at the point of importation for precursor chemicals and when medication containing pseudoephedrine is dispatched at pharmacies, there is currently no regulation controlling diversion from the premises of a manufacturer, wholesaler or distributor of chemicals or scientific equipment. This occurs when a person or organisation intending to divert a chemical or apparatus pretends to be a legitimate purchaser.

Consultation questions: Do you think the diversion of precursor chemicals and equipment has an effect on local production and consumption of illicit ATS in Victoria? What is your view of the role of regulation in addressing the risk of diversion?

The best available indicator of the extent of ATS production and abuse is the number of clandestine laboratories detected, as no forensic data is systematically collected and analysed (in Victoria or other jurisdictions) that would enable the source of diverted precursors to be determined. Despite the stabilisation in the detections of clandestine laboratories in Australia in 2007-08, an increasing number of clandestine laboratories has been detected in Victoria between 1997-98 and 2007-08. While this might indicate better detection by police in recent years, it might also indicate that the number of such laboratories is on the rise in Victoria.

The number of Victorian seizures has increased by 12.3 per cent even though the weight of seizures has decreased by 25 per cent in the same period. However, this could be an indication that Victorian ATS manufacturers have changed their distribution methods. By carrying smaller quantities in each location, potential losses are decreased when a location is detected and raided. The increase in the number of seizures, however, indicates that the number of locations could have increased, suggesting that the availability and accessibility of ATS could be on the rise.

The manufacturing and consumption of ATS impose costs on the community, businesses and the Victorian Government. In 2008, the Department of Health and Ageing quantified the various costs imposed on the Australian community associated with the tobacco, alcohol and illicit drug abuse. These costs are summarised in the table below. The study also reported that the real social costs of illicit drug abuse rose by 11.35 per cent between 1998-99 and 2004-05.

Total social costs of illicit drug abuse, 2004-05

Cost category	Illicit Drug (\$ m)	Illicit Drug and Alcohol (\$ m)	Victoria's share of ATS abuse costs (\$ m) ¹
Tangible costs			
Crime costs	3,644.5	1,057.8	162.5
Healthcare costs	201.7	-	7.0
Road accident costs	527.6	-	18.2
Productivity costs	1,648.9	-	57.0
Resources used in abusive consumption	892.7	-	30.8
Intangible costs			
Loss of life	1,204.7	-	41.6
Pain and suffering (road accidents)	69.7	-	2.4
Total	8,189.8	1,057.8	319.5

¹ Victoria's share of ATS related costs is calculated taking into account Victoria's population as a percentage of Australia's population. Victoria's population stands at 5.427 million, while Australia's population stands at 22.145 million, hence Victoria makes up 24.5 per cent of the population. The calculation also applies the Drug Harm Index of 14.1 per cent that can be attributed to ATS abuse as a proportion of total illicit drug abuse on the overall national social costs of the use of drugs contained in the Collins and Lapsley report.

Taking into account Victoria's population, a simple estimate of the costs imposed by ATS abuse in Victoria is approximately \$319.5 million².

The study showed that businesses shouldered the majority of the burden of illicit drug abuse bearing 49 per cent of illicit drug abuse tangible costs due to a reduction in workforce size, absenteeism and reduced on-the-job productivity. The rest of the burden was split between the Government, shouldering 41 per cent of costs, and households, bearing approximately 10 per cent of costs. In addition to crime costs, healthcare and accident costs, productivity losses and resources directed to addressing the abusive consumption of illicit drugs, the use of illicit drugs also had impacts on the Federal and State Governments' budgets.

Objectives for the regulatory framework

The aim of a regulatory framework for a sales and storage regime for precursor chemicals and equipment is to prevent the diversion of precursor goods to illicit drug production and promote regulatory consistency for businesses and consumers. Therefore the policy objectives of the regulatory framework are to:

- reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production;
- ensure that the Victorian approach will facilitate a movement towards a national framework;
- improve information available to assist law enforcement; and
- minimise the additional administrative burden imposed on businesses.

Consultation Questions: Do you think these policy objectives are appropriate? How do they fit with your perception of the problems being addressed?

Options to achieve objectives

Four states (South Australian, Western Australian, Queensland and New South Wales) in Australia have mandated sales and storage regimes for precursor chemicals and equipment over the last 15 years by implementing elements of the voluntary industry Code issued by the Plastics and Chemicals Industries Association (PACIA) and Science Industry Australia (SIA), with variations specific to each regime.

Victoria currently has no regulatory requirements governing the sale and storage of precursor chemicals and equipment other than the voluntary PAICA/SIA Code. As compliance to the Code is voluntary and no penalty will be incurred for non-compliance, it is assumed that the current compliance rate for implementing any sale and storage requirement is low. If the current

² Refer to Table 6-3 for more details on the calculations. This estimate is derived by taking into account Victoria's population and the Drug Harm Index for ATS. The estimate was not from the Collin and Lapsley report.

level of compliance with the PACIA/SIA Code of Practice is higher than assumed, then the cost of Option 2 may be lower, and this could impact on the ranking of the options.

Consultation questions: Is the assumption of low industry compliance with the PACIA/SIA Code appropriate? What are the factors that affect compliance?

The Department of Justice hence believes that the current arrangements do not adequately prevent or minimise the diversion of licit precursor chemicals and equipment into illicit drug production. Therefore the following options are being considered as part of this consultation process:

- Option 1 – the proposed regulations approach
 - Introduce regulations mandating sales and storage procedures for prescribed categories of precursor chemicals and equipment, which are contained within the regulations and are based on elements of the PACIA/SIA Code. The prescribed categories of precursor chemicals and equipment will be determined by the Department of Justice and relevant Ministers and it will be at the discretion of the Department and the Ministers, taking into account any advice from the Australian Government assessments, to include or remove any precursor chemicals or equipment.
 - A risk assessment framework would be in place under the proposed approach to determine the list and categories of precursor chemicals and equipment that would be regulated.
 - The proposed regulations will bring Victoria into line with other jurisdictions in that they take a regulatory approach. Victoria's scheme is modelled most closely on NSW's and is similar in approach to the other jurisdictions, which are all modelled to varying degrees on elements of the PACIA/SIA Code.
- Option 2 – the co-regulatory approach
 - Introduce a co-regulatory regime where the industry associations (PACIA and SIA) are responsible for establishing the list of chemicals and apparatus to be included in the regulatory framework. This is expected to introduce more flexibility in terms of updating the list of precursor chemicals and apparatus to reflect changes in the production technologies or methods in the illicit drug production market.
 - Regulations would give effect to the PACIA/SIA Code and make compliance mandatory.
 - The Government monitors and enforces industry compliance.
- Option 3 – the non-regulatory approach

- Implement an awareness campaign to educate and encourage industry participation in the voluntary PACIA/SIA Code and only introduce a regulatory regime when a national approach has been agreed upon.

Cost benefit assessment and the preferred option

The costs and benefits of each option are compared to the base case through the consideration of the expected impacts of each option on the Victorian Government, businesses and the community. The cost benefit assessment is conducted through:

- the quantification of costs (where possible);
- qualitative discussions of benefits;
- the use of break-even analysis to provide an indication of the increase in compliance required for each option to be cost beneficial; and
- a balanced scorecard approach to determine the preferred option.

A summary of the costs and benefits associated with each option is provided in the table below.

Outline of the nature of the costs and benefits to each stakeholder group

	Stakeholder group		
	The Victorian Government	The chemical industry, the scientific equipment industry and the industry associations	The broader community
Option 1 Costs	<ul style="list-style-type: none"> • Costs of implementing and enforcing legislation • Cost of initial awareness campaign and subsequent updates 	<ul style="list-style-type: none"> • Compliance costs • Administration costs • Secure storage costs 	<ul style="list-style-type: none"> • Minimal administrative costs imposed on end users or new account holders
Option 1 Benefits	<ul style="list-style-type: none"> • Contribute to the achievement of Victorian Government's drug policy objectives • Decreased cost of policing and enforcement 	<ul style="list-style-type: none"> • More consistent approach to record keeping across jurisdictions 	<ul style="list-style-type: none"> • Decreased health related expenditure may lead to increased spending in other portfolios by the broader community • Decrease in costs of crime associated with drug production and consumption on the broader community

Stakeholder group			
	The Victorian Government	The chemical industry, the scientific equipment industry and the industry associations	The broader community
	<ul style="list-style-type: none"> Decreased health related expenditure 		<ul style="list-style-type: none"> Increase in productivity due to decrease in drug consumption and subsequent effect of consumption on general businesses and the broader community
Option 2 Costs	As with Option 1	Similar to Option 1, due to added flexibility, cost to update industry increased	As with Option 1
Option 2 Benefits	As with Option 1 but likely to be slightly higher	More flexibility with PACIA and SIA listing changes	As with Option 1 but likely to be slightly higher
Option 3 Costs	As with Option 1	No costs	If voluntary approach taken up by industry, same as Option 1
Option 3 Benefits	If voluntary approach taken up by industry, similar to Option 1	If voluntary approach taken up by industry, similar to Option 1	If voluntary approach taken up by industry, similar to Option 1

It is difficult in this case to quantify the benefits to the economy for the proposed regulations. However it is essential that the proposed regulations do not impose unnecessary costs to businesses and the community, hence the costs of the regulations must be lower than the benefits calculated. A break-even analysis was performed for each option. The break-even analysis shows the reduction in social harms that would need to result for the regulations to be cost-beneficial. The results indicate that:

- Option 1 – the reduction in the level of social harm required is 0.45 per cent.
- Option 2 – the reduction in the level of social harm required is 0.51 per cent.
- Option 3 – the reduction in the level of social harm required is 0.005 per cent.

Note that under Option 3, as compliance is voluntary, it is unlikely that the reduction in social harm (as minimal as it is) will be achieved as the compliance level is not likely to increase. Hence, it is unlikely that Option 3 is cost beneficial.

A net present value analysis (NPV) was also performed to highlight the NPV of the costs of the options for the duration of the regulatory period. Note that because benefits are not quantifiable for all options, they are not included in the NPV analysis.

- Option 1 would result in a net present value cost of \$9.46 million;

- Option 2 would result in a net present value cost of \$9.60 million, with additional costs borne by both businesses and the government due to the increased number of updates to the list of precursor chemicals and equipment governed by the regulations; and
- Option 3 would result in the least net present value cost at \$0.014 million since businesses incur no additional administrative costs under this option, as compliance with the sale, storage and record requirements under the PACIA/SIA Code is voluntary and the government is only conducting an initial information and education campaign to promote compliance with the Code.

The balanced scorecard approach was used to assess the costs and benefits of the proposed options to the base case and to assess the merits of each option by assigning a relative score to each. The evaluation criteria used to assess the options are based on the four objectives as outlined in Section 4. Each option has been evaluated on the degree to which it is estimated to:

- reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production;
- facilitate a movement towards a national framework;
- improve record-keeping procedures to assist law enforcement; and
- minimise the additional administrative burden imposed on businesses.

Mandating sales and storage procedures for prescribed categories of precursor chemicals and equipment under Option 1 and Option 2 is expected to help reduce the diversion of licit precursor chemicals and equipment into illicit drug production, thereby reducing the negative externalities and costs imposed on the community, businesses and Government associated with the production of ATS.

The balanced scorecard for the proposed options

Criteria	Weighting (%)	Base case		Option 1		Option 2		Option 3	
		Assigned score	Weighted score	Assigned score	Weighted score	Assigned score	Weighted score	Assigned score	Weighted score
Reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production	30	0	0.0	3	0.9	4	1.2	1	0.3
Ensure that the Victorian approach will facilitate a movement towards a national framework	30	0	0.0	4	1.2	2	0.6	0	0
Improve record-keeping procedures to assist law enforcement	20	0	0.0	5	1.0	5	1.0	2	0.4
Minimise the additional administrative burden imposed on businesses	20	0	0.0	-3	-0.6	-4	-0.8	-1	-0.2
Total	100	0	0.0	11	2.5	8	2.0	2	0.5

The balanced scorecard approach showed that Option 1 scored the highest as it best met the objectives of the regulatory framework when compared to the other options. Therefore, it is expected to deliver the highest overall benefits if implemented. The balanced scorecard analysis shows that Option 1 is favoured despite Option 2 being more effective in reducing the diversion of licit precursor chemicals, on the basis that it is expected to impose lower administration costs on the chemicals and scientific equipment industries than Option 2 and is more consistent with the regulatory regimes in Australia, especially New South Wales which is the nearest and largest jurisdiction for the precursor chemicals and equipment industry, and will better facilitate a movement towards a national approach.

Consultation question: What is your view of the conclusions reached using the balanced scorecard analysis?

Implementation and enforcement

The Department of Justice will develop initiatives for an industry education and awareness campaign prior to the introduction of the regime, in consultation with Victoria Police. It is expected that, once the end-user scheme is in operation, day-to-day queries from industry members would be handled by the Chemical Diversion Desk at Victoria Police. There will be no ongoing administration role for the Department of Justice.

The offence provisions in the regime would be enforced by Victoria Police. Victoria Police would have the power to charge a supplier with an offence under the legislation and would have the power to inspect EUDs, sales records and access authorisations held by suppliers.

Consultation undertaken

The proposed period for public submissions to this RIS is 28 days, to align with the commencement date of 31 May 2010, when regulations have to be established in order for the amendments to be implemented.

The Department consulted with businesses and the community on 26 July 2008 by releasing the Discussion Paper “A New Sales and Storage Regime for Precursor Chemicals and Equipment in Victoria – Proposed amendments to the Drugs, Poisons and Controlled Substances Act 1981”, which was sent to 660 organisations, including chemical manufacturers and distributors, scientific and research organisations, pharmaceutical companies and 10 industry peak bodies. The discussion paper was also advertised in *The Age* and the *Herald-Sun* on 28 June 2008 and in the *Weekly Times* on 2 July 2008. The discussion paper included a survey for industry members to complete about current end-user reporting practices.

1 Introduction

The Victorian Government (“the Government”) has introduced a new regime to regulate the supply of precursor chemicals and precursor apparatus. The regime is detailed in amendments to the *Drugs, Poisons and Controlled Substances Act 1981*, which were passed by the Victorian Parliament in September 2009. The legislation was enacted to reduce health and welfare risks to individuals and the community from the production and misuse of amphetamine-type stimulants (ATS), which are manufactured from licit precursor chemicals and equipment that have been diverted to ATS production.

The amendments to introduce the new regime were contained in the *Justice Further Legislation Amendment Act 2009*. The amendments are not yet in force, but will come into operation no later than 31 May 2010.

The Government recognised the need to prevent the diversion of licit precursor chemicals and equipment into the manufacturing of illicit drugs, especially ATS, through means of legislation. The rationale for enacting the legislation was to:

- minimise the diversion of licit precursor chemicals and equipment into illicit drug production in order to reduce the negative externalities and costs imposed on the community, businesses and Government associated with the production of ATS;
- improve record-keeping procedures to assist law enforcement and aid in the investigation into criminal activities linked to the production and consumption of ATS and to assist the prosecution of illicit drug production cases; and
- minimise the additional administrative cost imposed on businesses by bringing Victoria in line with legislative regimes in other jurisdictions and to provide some consistency with the regulatory requirements in these jurisdictions.

The Victorian Government also recognised that an increase in the production of ATS resulted in societal costs imposed on the community, businesses and government. These costs were considered to be associated with the manufacturing and trafficking of ATS, which can be partly attributed to the diversion of licit precursor chemicals and equipment to illicit drug production. These costs have been imposed through an increase in drug related criminal activities, an increase in drug related social problems (family welfare and social unrest), a decrease in economic productivity and an increase in drug related rehabilitation costs.

Criminal activities associated with ATS have imposed significant costs on the Australian community. It is therefore important to have regulatory measures in place to prevent the diversion of licit precursor chemicals and apparatus to the production of ATS in order to minimise the costs imposed on the community.

Regulatory measures at the start of the illicit drug production / distribution chain would support tightened law enforcement activities at the end of the production chain. Measures that control the sales, supply and storage of precursor chemicals and apparatus would reduce the diversion of licit precursors.

The Government is now issuing, for public comment, draft regulations that are intended to support the legislation passed in September 2009. The draft regulations prescribe lists of chemicals and apparatus used in the production of ATS that are intended to be subject to the new controls. The draft regulations also prescribe the information to be included in end user declarations.

The draft regulations do not prescribe any illicit methamphetamines themselves, since the purpose of the regulations is solely to prescribe the licit substances and equipment used to make illicit drugs. Moreover, the regulations only list chemicals and apparatus used in the production of ATS. Other illicit drugs are manufactured by different methods (for example cultivation and extraction from plants in the case of cannabis, heroin and cocaine), are subject to other targeted law enforcement measures, both locally and at the border.

The production of ATS in clandestine laboratories and the consumption of such drugs impose major risks and high societal costs on the Australian community (with the business sector incurring most of the tangible costs), which adversely impacts on overall economic growth in Victoria. The proposed regulations are expected to address these negative externalities.

This regulatory impact assessment (RIS) is structured as follows:

- Executive Summary;
- Introduction;
- Background to the problem;
- Objectives;
- Options to achieve objectives;
- Cost benefit assessment of the proposed options;
- Competition assessment;
- The preferred option;
- Implementation and enforcement; and
- Consultations undertaken.

2 Background on the problem

2.1 Overview of the Chemical and Scientific Equipment Industries

The industries impacted by the proposed regulations include:

- chemical and plastics manufacturing and wholesaling;
- pharmaceutical manufacturing and wholesaling; and
- scientific and medical equipment manufacturing and wholesaling.

The chemical, plastics, pharmaceutical and scientific equipment manufacturing and wholesaling industries tend to be highly fragmented and made up of a large number of small establishments with the majority, 60 to 70 per cent, of businesses located in New South Wales (NSW) and Victoria.³ NSW and Victoria share the market equally, with Victoria making up roughly 30-35 per cent of the precursor chemical and equipment wholesale and manufacture market. Given that Victoria is one of two major markets, there should therefore be a focus for regulations/measures that will prevent the diversion of readily available precursor chemicals and equipment into the production of illicit drugs.

2.2 Background on amphetamine-type stimulants (ATS)

ATS are a group of psychostimulant drugs that are related to the parent compound amphetamine. They include methamphetamine, ecstasy (MDMA) and some licit pharmaceuticals, such as dexamphetamine and Ritalin, which are used to treat conditions such as attention deficit disorder. In Australia, the main ATS used are methamphetamine and ecstasy.

Methamphetamine is a highly addictive form of amphetamine that has four common forms: powder (or 'speed'), base (a paste), crystal (known as 'ice') and tablets.

ATS affect the human body by increasing brain activity and stimulating the central nervous system. Regular use of ATS can lead to dependence and difficulty in regulating use.

A 2008 report by the United Nations Office of Drugs and Crimes (UNODC)⁴ expressed concern that the growth of ATS related cases is promoted by the growth of trafficking and manufacturing in clandestine laboratories, which has been largely enabled by the availability of precursor chemicals and equipment within particular regions in the world.

³ Sources:

1. IBISWorld 2009, Adhesive, Cleaning and Other Chemical Product Manufacturing in Australia: C2549
2. IBISWorld 2009, Chemical Wholesaling in Australia: F4523
3. IBISWorld 2009, Pharmaceutical Product Manufacturing in Australia: C2543
4. IBISWorld 2009, Pharmaceutical Wholesaling in Australia: F4797
5. IBISWorld 2009, Medical and Surgical Equipment Manufacturing in Australia: C2832
6. IBISWorld 2009, Medical and Scientific Equipment Wholesaling in Australia: F4612

⁴ United Nations Office of Drugs and Crimes (UNODC) 2008, *Global ATS Assessment Amphetamines and Ecstasy*.

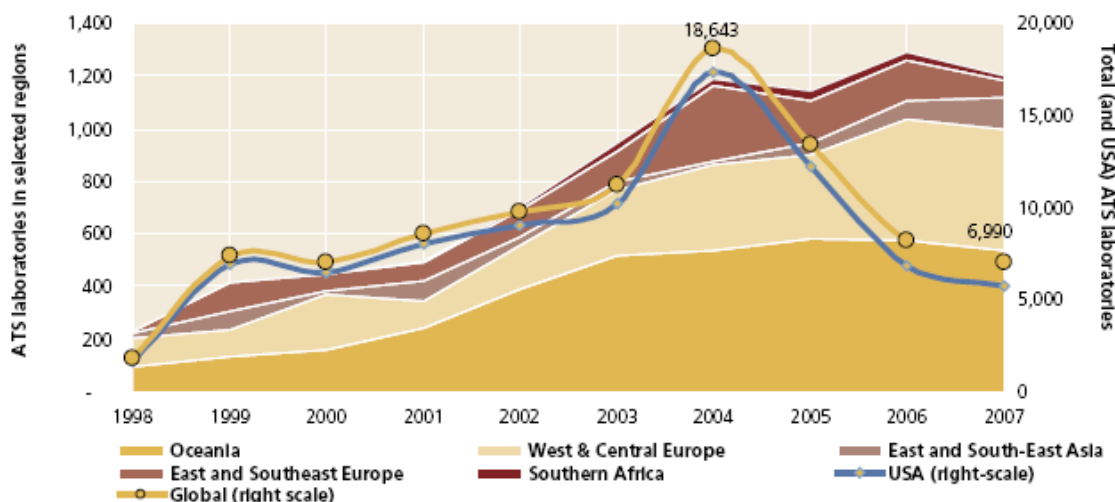
2.2.1 Prevalence of ATS in Australia

Production trend

A consistent increase in the detection of clandestine laboratories around the world since 1998 reached its peak in 2004. While the number of detected clandestine laboratories subsequently fell until 2007⁵, the volume of ATS drug seizures has increased. This suggests that the manufacture of ATS related drugs is increasingly conducted in larger clandestine facilities, with larger production capacities, and the operations of such laboratories are increasingly more difficult to detect.

The number of ATS laboratories (all sizes) reported for the period 1998-2007 shows that the Oceania region (defined as Australia and New Zealand)⁶ contributed to almost half of the total number of clandestine laboratories detected worldwide, as presented in Figure 2-1.

Figure 2-1: Number of reported ATS laboratory incidents (all size), by notable regions, 1998-2007



Source: UNODC 2009, *World Drug Report 2009*, p.117

Amphetamines-group laboratory seizures in Oceania have remained at high levels for the past several years, even though there are signs of a moderate decrease in 2007. For Australia, a total of 328 (an 8 per cent decline from the previous year) amphetamines-group and combination ATS-type operations (excluding MDMA only operations) were detected. Figure 2-2 shows that the majority of amphetamines-group laboratory seizures in the Oceania region are from Australia.

⁵ UNODC 2009, *World Drug Report 2009*, p.117

⁶ Note that the report presents graphs and data mostly at the region level. Australia has been included in the Oceania region which also includes New Zealand. Where possible, Australian specific data will be reflected in this document.

Figure 2-2: Oceania amphetamines-group laboratories seized (all sizes), 1998-2007



Source: UNODC 2009, *World Drug Report 2009*, p.122

UNODC found signs that criminal organisations are adapting their manufacturing operations to avoid detection by:

- utilising precursor chemicals not under international control;
- moving manufacturing operations to more vulnerable locations; and
- shifting precursor chemicals and drug trafficking routes to new locations to avoid detection.

Evidence points to increased frequency of manufacturing ATS using uncontrolled precursors, most notably tableted pharmaceuticals. Tableted pharmaceuticals containing pseudoephedrine do not fall under the same international controls as bulk chemicals containing the identical chemicals, and therefore are more easily accessible.⁷

Consumption trend

In terms of consumption, the UNODC reported that the trend of ATS abuse in Oceania (Australia and New Zealand) has been relatively higher⁸ than the rest of the world, with 2.6 per cent (global average was 0.4 to 1.2 per cent) of the population between the ages of 15 to 64 having used amphetamines at least once in the past year and 3.6 to 4.0 per cent (global average was 0.3 to 0.5 per cent) having used ecstasy at least once in the past year. In fact, Australia's amphetamine prevalence annual rate at 2.3 per cent and ecstasy prevalence annual rate at 3.5 per cent in 2007 makes Australia's ranking the highest compared to the rest of the world.

⁷ UNODC 2009, *World Drug Report 2009*, pp. 118-19

⁸ *ibid*, p. 146

2.2.2 Prevalence of ATS in Victoria

A range of law enforcement related initiatives have been implemented in Victoria, including those that are part of national initiatives to reduce use and manufacture of ATS. These include:

- pill press and precursor possession offences;
- Pseudoephedrine (PSE) rescheduling;
- Project STOP;
- development of alternative products to reduce diversion of retail products; and
- the Victoria Police major crime management model.

Despite a multi-faceted response to illicit drugs that includes a range of demand reduction and harm reduction strategies to minimise the manufacture and use of ATS, there is anecdotal evidence to suggest more needs to be done in managing this societal problem. The limited recent year data makes it difficult to determine the extent of the problem related to ATS that is specific to Victoria.

The primary source of data includes data from the 2007 National Drug Strategy Household Survey, the Illicit Drug Reporting System (IDRS) and the Victorian Drugs Statistic Handbook 2007⁹.

The 2007 National Drug Strategy Household Survey indicated that, between 1993 to 2007, the percentage of people who had ever used methamphetamine decreased from 8.9 to 6.3 per cent while the reverse was true for ecstasy, which increased from 6.1 to 8.9 per cent. The report revealed ecstasy and methamphetamine are the top two drugs among all illicit drugs thought to directly or indirectly cause the most deaths in Australia for persons aged 14 years or older, at 9.9 and 7.2 per cent respectively. Results from the survey also indicated that the illicit drug that presented the most serious concern for the community was methamphetamine, with 16.1 per cent of persons surveyed expressing concern.¹⁰

The Victorian Drugs Statistic Handbook 2007 provided more specific data on Victorian illicit drug usage. It found that 11 per cent of Victorians aged 14 year and over have tried methamphetamine, cocaine and/or ecstasy in 2007, equating to almost half a million people and that stimulant use is most prevalent among young people. These findings were consistent with the anecdotal evidence mentioned in the *Victorian Amphetamine-Type Stimulants (ATS) and related drugs strategy 2007-10 Discussion Paper* issued by the Department of Human Services, which indicated that methamphetamine substances had become a more widespread phenomenon within rave parties, clubs and entertainment venues and that people from younger age groups had become more involved in the use of ATS.

⁹ Department of Human Services 2007, *The Victorian Drug Statistics Handbook: Patterns of drug use and related harm in Victoria for the period July 2006 to June 2007* (Report Number 10), Victoria.

¹⁰ The Australian Institute of Health and Welfare 2007, *National Drug Strategy Household Survey*, pp. 11-19.

The 2008 *Australian Drug Trends – Findings from the IDRS Report*¹¹ indicated that methamphetamine continued to dominate the market in Australia, the majority of which is produced domestically.¹²

Police officers operating within the Latrobe Valley, which included the regional centres of Churchill, Moe, Morwell and Traralgon, noticed an increase in seizures of amphetamines and in crime related to amphetamine trafficking between 2000 and 2003.¹³ Although law enforcement agencies had not noticed a significant upward trend, it had been observed that the ATS activity in regional Victoria had been largely driven by transient populations that had temporarily settled in regional areas while waiting for more permanent settlement in metropolitan areas. In some parts of Victoria, anecdotal evidence linked the production and trafficking of amphetamines in regional areas with the activities of outlaw motorcycle gangs.¹⁴

Further, the Australian National Council on Drugs (ANCD) in their Methamphetamine Position Paper (2007) reported that significant shifts had taken place in ATS supply sources within the Australian illicit drug market. It found that the availability of precursor chemicals for local clandestine laboratory productions had increased, leading to wider distribution of ATS in more affordable purchase units. Further, ANCD concluded that the majority of methamphetamine was supplied through domestic clandestine laboratory manufacture.

These findings by ANCD, coupled with the high number of clandestine laboratory detections in Victoria¹⁵, suggest that the supply of illicit drugs in Victoria is being served by local production capability within the state.

Further, it is considered highly likely that the production of ATS in clandestine laboratories in Victoria is contributing to the consumption of ATS by drug users in Victoria. This finding affirms the findings of the IDRS Report.

While there is little available data beyond anecdotal evidence to demonstrate the link between local ATS production and local ATS consumption in Victoria, it is possible to infer such a relationship from the findings of a study published in 2005 by R McKetin, J McLaren and E Kelly about the Sydney methamphetamine market. This study was funded by the National Drug Law Enforcement Research Fund.¹⁶

The study used a range of methods to understand the nature of the methamphetamine market in Sydney, including semi-structured interviews with 54 health and law enforcement professionals

¹¹ Stafford J., Sindicich N., Burns L., Cassar J., Cogger S., De Graaff B., George J., Moon C., Phillips B., Quinn B. and White N., *Australian Drug Trends 2008 Findings from the Illicit Drug Reporting System (IDRS)*, *Australian Drug Trends Series No. 19*.

¹² *ibid*, p. 49.

¹³ Information provided by the Department of Justice.

¹⁴ Parliament of Victoria (Drugs and Crime Prevention Committee) 2004, *Inquiry into Amphetamine and Party Drug Use in Victoria: Final Report*.

¹⁵ The Australian Crime Commission in its Illicit Drug Data Report 2007-08 indicate that the number of ATS clandestine laboratories detected in Victoria decreased from 72 in 2006-07 to 59 in 2007-08 (p. 31), but Victoria had the second highest rate of detections among jurisdictions. The number of clandestine laboratories for all drug production types detected in Victoria increased from ? to in 2006-07 to 76 in 2007-08.

¹⁶ McKetin, R, McLaren, J and Kelly, E 2005, The Sydney methamphetamine market: Patterns of supply, use, personal harms and social consequences, National Drug Law Enforcement Research Fund, Monograph Series No. 13, Commonwealth of Australia

and face-to-face surveys of 310 regular methamphetamine users from the Sydney metropolitan region, which included 55 regular methamphetamine dealers.

The study found that methamphetamine supply in Sydney consisted of a mixture of imported crystal methamphetamine (or 'ice') and domestically produced base and powder methamphetamine. There was also some evidence of domestic ice manufacture.

Outlaw motor cycle gangs were reported to play a key role in the domestic production and distribution of base, being particularly dominant in western Sydney, but their involvement was not exclusive to this geographic region. Other criminal networks were also found to be involved in distributing the drug. The study pointed to 'turf' boundaries at a dealing level, with the availability and consumption of base and ice in various geographic regions of Sydney mirroring the involvement of criminal networks supplying these drugs.

The study further found that methamphetamine users did not have a detailed knowledge of methamphetamine manufacture and importation, but often knew people who had undertaken such activities. The study reported that this was particularly common for domestic manufacture, with one-third of surveyed methamphetamine users having known someone who had made methamphetamine in the last year.

While to our knowledge a detailed study of this nature has not been undertaken in respect of the Melbourne or Victorian methamphetamine markets, it is reasonable to infer that a similar nexus is likely to exist in Victoria between local methamphetamine supply channels and local consumption, with production and distribution networks mirroring the availability of methamphetamines within different geographic regions of Victoria.

The conditions in Victoria that would make this feasible include the presence of motor cycle gangs in Victoria, as well as other organised criminal networks known to be involved in drug trafficking. A rise in the number of clandestine laboratory detections for all drug production types in Victoria in 2007/08 suggests a continuing and potentially escalating level of activity in local drug production, which further makes the type of geographical nexus between production and consumption identified in Sydney a realistic possibility in Melbourne and major regional centres in Victoria.¹⁷

2.3 Diversion of precursor chemicals and equipment to illicit drug production

Diversion Routes

The manufacture of ATS requires a range of chemicals, including reagents and solvents. Chemicals may be incorporated in full or in part into the final ATS product. Reagents facilitate a reaction but do not become a part of the final product, while solvents dissolve another usually solid substance, also, like reagents, do not form part of the final ATS product.

¹⁷ Information provided by the Department of Justice.

These chemicals can be legally purchased from a commercial chemical manufacturer, importer or distributor or, in the case of pseudoephedrine, a local pharmacist.

The supply chain for precursors consists of all parties involved in the production, distribution and supply of the chemicals or equipment. Diversion may occur at each of these points.

For example, precursor chemicals and equipment may be imported into Australia and diverted direct from the Australian border. Significant amounts of ATS precursors continue to be detected in the air cargo stream by Federal authorities. The Australian Government is responsible for the border law enforcement as well as regulation of legal importation of precursor chemicals and has in place a number of strategies to control diversion.

Diversion may also occur at retail pharmacies via a process known as ‘pseudo running’, whereby illicit drug operations employ people to visit different pharmacies and purchase multiple supplies of cold and flu tablets containing pseudoephedrine. This problem has been addressed in several ways. In 2006, under the pseudoephedrine rescheduling initiative, all pharmaceutical products containing pseudoephedrine were rescheduled from Pharmacy Medicines under Schedule 2 of the *Commonwealth Standard for Uniform Scheduling of Drugs and Poisons* (substances which should be available from a pharmacy and may require advice from a pharmacist), to Pharmacist Only Medicines under Schedule 3 (substances which are available without prescription but must only be dispensed with professional advice). From 1 April 2006, all liquid preparations containing more than 800mg of pseudoephedrine and all other preparations containing more than 720mg of pseudoephedrine were rescheduled to Prescription Only Medicine (Schedule 4). The effect of these changes has been to restrict the ready availability of products containing pseudoephedrine by ensuring that they cannot be dispensed in pharmacies without the professional assessment and advice of a pharmacist or, in the case of Schedule 4 medicines, without a prescription. The PSE rescheduling initiative is targeted at restricting the availability of end-products which contain pseudoephedrine while the proposed regulations are targeted at constituent chemicals.

Pharmacists have also been encouraged to provide alternative therapeutic products which do not contain pseudoephedrine, and to utilise the free online recording and reporting system ‘Project STOP’, which has been implemented in all jurisdictions since 2007. This project, an initiative of the Pharmacy Guild of Australia, provides a ‘real-time’ recording system that not only acts as a decision making tool for pharmacists, but can be utilised by enforcement agencies as a surveillance tool.

Another common route of diversion, and the one that is the subject of this RIS, is diversion from the premises of a manufacturer, wholesaler or distributor of chemicals or scientific equipment. This occurs when a person or organisation intending to divert a chemical or apparatus pretends to be a legitimate purchaser. In some cases, the subterfuge can be sophisticated, with a counterfeit company being created to give the appearance of being a legal operation. If the checking, recording or storage procedures of a supplier are not applied rigorously, the firm may be targeted by criminal networks.

These are just some examples of the diversionary routes that exist. It is important to note that the voluntary industry Code aimed at preventing precursor diversion, which is discussed further below in this section, and the precursor control systems legislated in NSW and other states

based on the Code, are aimed only at diversion from the premises of chemical manufacturers, distributors and wholesalers. Diversions from other locations, such as the border or retail pharmacies, have required other targeted measures, as outlined in the paragraphs above.

Types of precursor chemicals used to produce illicit drugs

The common types of illicit synthetic drugs produced in clandestine laboratories are the various forms of methylamphetamine (power or 'speed', base, crystal or 'ice', and tablets), and MDMA or ecstasy and its derivatives (MDA, MDEA and PMA).

The Australian Crime Commission (ACC), in its latest Illicit Drug Data Report 2007-08, identified four production methods commonly used to produce ATS. The methods are the hypophosphorous method (using pseudoephedrine), the red phosphorous method, the 'Nazi/Birch' method and the Phenyl-2-propanone (P2P) method. However, the ACC notes that there are other unknown methods that are not included in its report.

No detailed empirical data is available to confirm preferred methods of production synthesis in Victoria, since the data would need to be extracted from Victoria Police case records and some cases are ongoing or linked to broader investigations, while other cases involve data dispersed between intelligence and investigative teams that is not readily available in discrete form. However, the Illicit Drug Report 2007-08 indicated that a total of 76 clandestine laboratories covering all drug production types were detected in Victoria. Of the 76 clandestine laboratories detected, 59 were related to ATS (excluding MDMA) production and, of that, 40 (approximately 68 per cent of laboratories detected) were using the hypophosphorous method.

The chemicals and equipment at risk of diversion are set out in the voluntary industry Code.

The Code in its original form was developed in 1994 and relaunched nationally in 2002. It is issued and updated by the Plastics and Chemicals Industries Association (PACIA) and Science Industry Australia (SIA), in consultation with law enforcement agencies. The key objective of this voluntary industry Code ('the PACIA/SIA Code') is the establishment of a common system of practice for Australian chemical manufacturers, importers and distributors and scientific equipment and instrument suppliers, to prevent the diversion of chemicals and scientific apparatus to illicit drug production.

The chemicals and equipment in the PACIA/SIA Code are categorised according to risk of diversion. The level of risk for each chemical or apparatus is assessed against a range of criteria including its availability in the marketplace and its comparative value in the synthesis process based on issues such as relative ease of use and safety of use.

Efforts aimed at minimising diversion of precursor chemicals and equipment into illicit drug production

The supply of raw materials from chemical manufacturers, distributors and wholesalers are crucial to the production of ATS. The availability and easy access to raw materials in Victoria¹⁸

¹⁸ Victoria has the second largest market share in terms of manufacturing and sale of chemicals.

makes the illegal production of illicit drugs an attractive business for potential criminals. Limiting the availability of precursors at a viable market price is a crucial step in reducing the manufacturing and trafficking of illicit drugs.

In Victoria, drugs and poisons are regulated through the *Drugs, Poisons and Controlled Substances Act 1981*. In 2007, the Victorian Government introduced amendments to the Act which created new offences to:

- prohibit the possession of a pill press without authorisation or other lawful excuse; and
- prohibit the possession of a prescribed precursor chemical over a prescribed quantity without authorisation or other lawful excuse.

These laws were introduced following agreement by all Police Ministers at the October 2005 meeting of the Ministerial Council for Police and Emergency Management – Police (formerly known as the Australasian Police Ministers Council). The Council agreed to these offences.

The objective of the laws is to assist law enforcement agencies, such as Victoria Police, to tackle amphetamine production at its source and to shut down illegal, clandestine drug laboratories even when the manufacturing process is not completed and the finished illicit drug is not present.

While these new laws have strengthened law enforcement efforts to close down clandestine laboratories in Victoria, a continuing challenge for law enforcement agencies is to control the interface between these illicit manufacturing operations and licit environments.

The difficulty in monitoring and limiting ATS production is that the precursor chemicals and equipment used in the production process are legally available and widely used by legitimate industry. Precursor chemicals and scientific equipment are supplied to and used in a wide range of industries including agriculture, construction and pharmaceuticals. Diversion of these chemicals and apparatus is most likely to occur if suppliers or their staff have not carried out adequate end-user checks at the point of sale, if lapses have occurred in storage security, or if a supplier has been targeted by an experienced criminal group. The dispersed nature of the industries' manufacture and use of these commonly available goods makes it extremely difficult for law enforcement agencies to monitor usage and to trace diversion activity.

The diversion of precursor chemicals also has important secondary impacts on the environment and on society, including children. Clandestine laboratories, which have been increasingly found within moderately populated areas, can pose a serious threat to the surrounding environment and to the population. The Illicit Drug Data Report 2007-08 highlighted that 80 per cent of all ATS clandestine laboratories detected were in residential areas¹⁹.

Some of the techniques to produce ATS involve chemicals with known explosive reactions and the capacity to produce dangerous fumes. These have resulted in serious damage to laboratory premises and surrounding areas, as well as injuries to laboratory operators. Victoria Police have reported finding children at a number of residences where precursor chemicals were being used

¹⁹ Australian Crime Commission 2009, *Illicit Drug Data Report 2007-08*, p. 31.

or stored for the purpose of manufacturing illicit drugs, which placed the safety of the children at significant risk. Victoria Police does not routinely monitor the number of children found at residences where precursor chemicals have been stored or used. However, based on a manual search of data, Victoria Police estimated in 2008 that approximately 25 per cent of known clandestine laboratories had children living in them. They also noted that it was probable children were being exposed to more laboratories and stored chemicals than the detection rate indicated. Remediation of the contamination caused by the laboratories has imposed significant costs on state and territory governments and on society. While statistics on rates of remediation of contaminated properties in Victoria are not available, it is clear that the contamination caused by clandestine laboratories, particularly by those operating in residential locations, imposes significant costs on state and territory governments and on society, such as the cost of remediation works, the damage to property and the surrounding environment, and the threat to the health and wellbeing of citizens.

In recent years, law enforcement agencies and industry in Australia have joined forces to tackle chemical and equipment diversion. As mentioned above, the PACIA/SIA Code is issued and updated by PACIA and SIA, in consultation with law enforcement agencies. It has operated since 1994, with the most recent edition having been released in October 2008 and reviewed in October 2009. The PACIA/SIA Code recommends end-user reporting and record keeping practices, and covers scientific equipment suppliers, chemical manufacturers, importers and distributors and laboratory suppliers throughout Australia.

Recent trends in clandestine laboratory detections in Victoria suggest that the voluntary industry Code is not making sufficient inroads into the supply of precursor chemicals and equipment to the illicit drug trade in Victoria, and that more needs to be done to boost levels of industry compliance with end-user checking and reporting procedures in order to minimise the diversion of licit precursor chemicals and apparatus.

There are a number of Commonwealth regulations²⁰ in place to control overseas trafficking and importation of precursor chemicals. The risk of diversion of pseudoephedrine based products from retail pharmacies has also been significantly reduced through tighter regulation of these products (i.e. PSE rescheduling, Project STOP) and the development of alternative products that do not contain pseudoephedrine. However, Victoria currently does not have regulations in place to allow the new precursor control regime to be implemented, which could allow potential illicit drug manufacturers to find the sourcing of precursor materials locally more viable than through importation. The new regime, which was passed by the Victorian Parliament in September 2009, is intended to address a gap in the supply chain in Victoria. The draft regulations, which will support the operation of the new regime, will close that gap.

²⁰ They include the Customs Act 1901, the Customs (Prohibited Imports) Regulations 1956, Quarantine Act 1908 and under the control of Australian Quarantine and Inspection Services (AQIS) as well as the National Industrial Chemicals Notification and Assessment Scheme (NICNAS).

2.3.1 Extent of problem

The UNODC *World Drug Report 2009* reported that, in 2007, 158 kilograms of amphetamine-group substance²¹ were seized from Australia, making up 0.4 per cent of world total ATS seizures. The report also indicated that there was a 60 per cent increase in ecstasy-group seizures worldwide. Six countries accounted for more than 80 per cent of reported seizures, with the largest amounts reported by The Netherlands, followed by Australia (25 per cent of total or 1,970 kilograms), USA, Canada, the United Kingdom and China.

The UNODC *World Drug Report 2009* estimated that approximately 9,286 kilograms of ATS were present in the illicit market of ATS in Oceania. The UNODC estimated that 88 per cent of ATS production in Oceania (representing markets in New Zealand and Australia) was sourced or manufactured within the region itself. Only 12 per cent was imported from other regions.

The best available indicator of the quantity of chemicals diverted to illicit drug manufacture in Australia is the number of clandestine laboratories detected, which is presented further below. No forensic data is systematically collected and analysed (in Victoria or other jurisdictions) that would enable the source of diverted precursors to be determined. While it is not possible to estimate the quantity or percentage of precursors diverted from the wholesale and manufacturing sectors, the number of clandestine laboratories detected in Victoria gives an indication of the level of activity in the local illicit drug production market. The availability and accessibility of local precursor chemicals and equipment is likely to influence local illicit drug production activities.

Despite the stabilisation in the detections of clandestine laboratories in Australia, with 356 laboratories detected in 2007-08²², as shown in Figure 2-3, the continued significant detections of clandestine laboratories indicate the existence of an ATS market that appears to be predominantly supplied by a stable domestic market supported by local manufacturing facilities²³.

This is especially so for Victoria, as shown by an increasing number of clandestine laboratory detections between the period of 1997-98 to 2007-08. While the number of clandestine laboratory detections for ATS production only (excluding MDMA) dropped in Victoria in 2007-08, detections are still at significant levels after a sustained period of growth. Overall, the number of detections of clandestine laboratories for all drug production types (including ATS production) has been on the rise in Victoria, despite the stabilisation in the number of detections nationally in 2007-08 as shown in Figure 2-4.

In addition, in 2007-08, the number of clandestine laboratory detections for all drug production types in Victoria continued to be the second highest among state and territory jurisdictions (after Queensland) and the highest ever recorded in Victoria since 1998-99 as shown in Table 2-1. While this might indicate better detection by police in recent years, it might also indicate that the number of such laboratories is on the rise in Victoria.

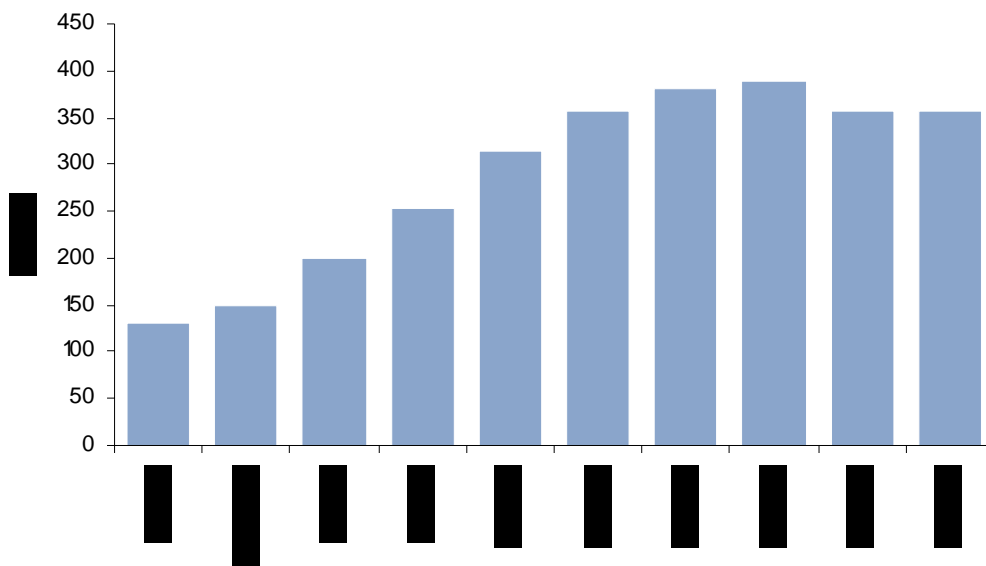
²¹ Amphetamine-group substances are amphetamine, methamphetamine and related non-specified amphetamines (excludes ecstasy-group substances)

²² *ibid.*, p. 28.

²³ *ibid.*, p. 36.

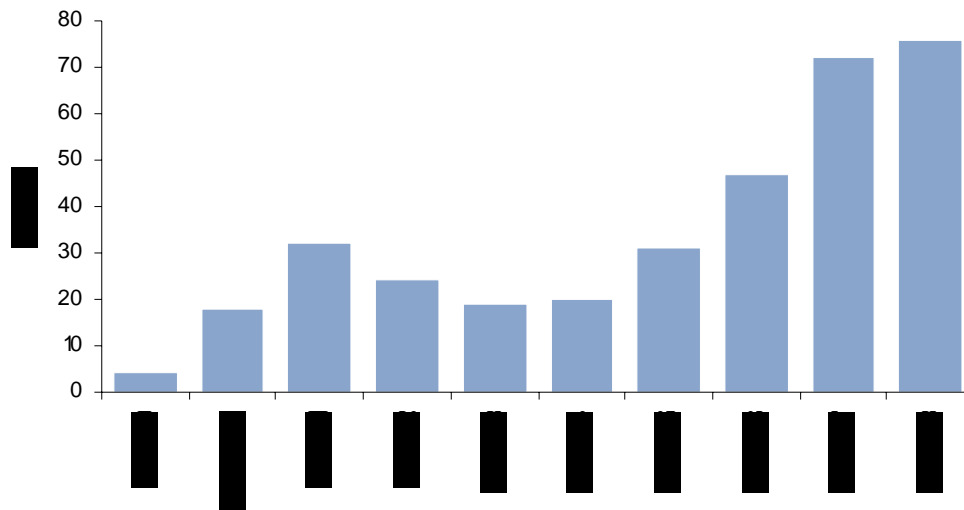
The majority of ATS clandestine laboratories detected in Australia use the hypophosphorous acid method of production, requiring pseudoephedrine as a precursor. The pseudoephedrine supply chain in Australia consists of chemical suppliers, manufacturers, wholesalers and pharmacies. The supply chain operates as follows. Chemical suppliers import powder for supply to manufacturers, or finished pseudoephedrine products for supply to wholesalers. Manufacturers also import powder or obtain it from local suppliers. Manufacturers market and sell finished pseudoephedrine products to wholesalers or, less frequently, pharmacies, while wholesalers supply finished products to pharmacies on the basis of pharmacy orders. Pharmacies then sell the finished pseudoephedrine products to consumers. Diversion can occur at each point in the supply chain. Diversion methods include burglaries, infiltration of companies, fraudulent purchases from manufacturers or wholesalers, armed robberies, doctor shopping, offshore internet purchases, and multiple purchases from pharmacies (known as ‘pseudo running’).

Figure 2-3: Number of clandestine laboratory detections 1997-98 to 2007-08 (Australia)



Source: Australian Crime Commission 2009, Illicit Drug Data Report 2007-08, p. 29.

Figure 2-4: Number of clandestine laboratory detections in Victoria, 1997-98 to 2007-08



Source: Australian Crime Commission 2009, Illicit Drug Data Report 2007-08

Table 2-1: Number of clandestine laboratory detections by drug production types, 2007-08

State	ATS (excluding MDMA)	MDMA	Others ^a	Total
NSW	37	10	5	52 ^b
VIC	59	0	17	76
QLD	82	0	39	121
SA	50	1	19	70 ^b
WA	29	0	0	30
TAS	2	0	0	2
NT	1	0	0	1
ACT	0	0	2	6
Total	260	11	87	358^b

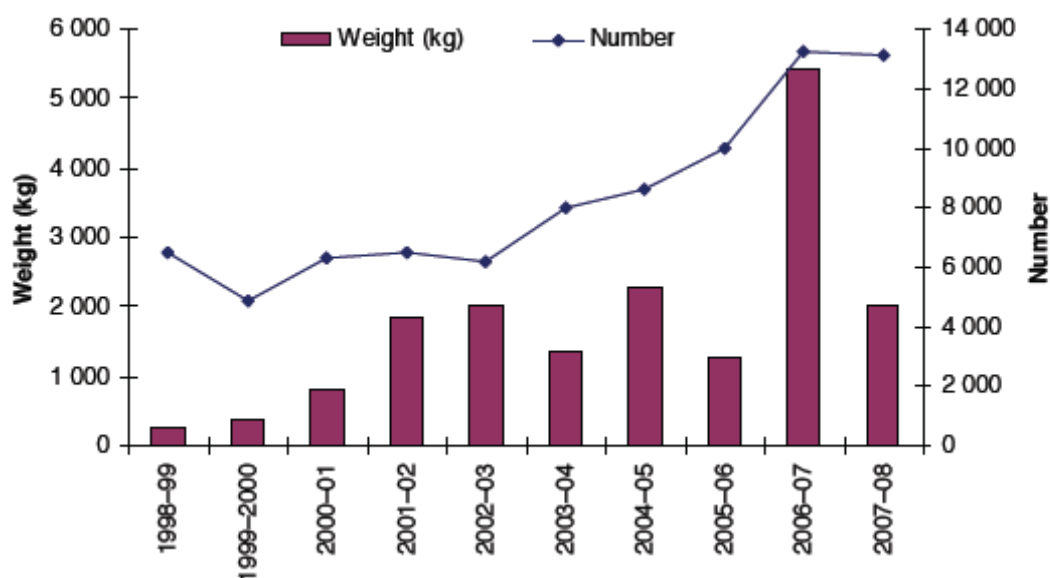
Note:

^a – Others include homebake heroin, pseudoephedrine extraction, cannabis oil extraction and unknown/unidentified drug types.

^b - Total exceeds the number of clandestine laboratory detections due to multiple drug production types identified at one location (MDMA and methylamphetamine)

Source: Australian Crime Commission 2009, Illicit Drug Data Report 2007-08, p. 30

Figure 2-5: National ATS seizures, by weight and number, 1997-98 to 2007-08



Source: Australian Crime Commission 2009, *Illicit Drug Data Report 2007-08*, p. 34

Table 2-2: Total number, weight and percentage change of national ATS seizures, 2005-06 and 2006-07

State/Territory ^a	Number			Weight (grams)		
	2006-07	2007-08	per cent change	2006-07	2007-08	per cent change
NSW	4,436	5,125	15.5	846,398	1,460,892	72.6
VIC	1,442	893	-38.1	4,449,469	394,780	-91.1
QLD	2,724	2,220	-18.5	98,233	32,191	-67.2
SA	219	236	7.8	7,027	13,085	86.2
WA	3,828	4,023	5.1	34,926	128,318	267.4
TAS	238	169	-29.0	4,209	3,803	-9.6
NT	128	186	45.3	1,413	1,953	38.2
ACT	228	245	7.5	1,318	827	-37.3
Total	13,243	13,097	-1.1	5,442,993	2,035,849	-62.6

^a - Includes seizures by state/territory police and AFP for which a valid seizure weight was recorded.

Source: Australian Crime Commission 2009, *Illicit Drug Data Report 2007-08*, p. 34

In 2006-07, the number of national seizures of ATS by law enforcement agencies hit its highest point thus far. While the number of national ATS seizures decreased marginally in 2007-08, they were the second highest on record, as shown in Figure 2-5. The majority of the seizures were made in NSW and WA with Victoria, Queensland and Tasmania reporting a decrease in seizure numbers. Nationally, a total of 2,036 kilograms of ATS was seized in 2007-08 representing a decrease of 63 per cent from the 5,443 kilograms seized in 2006-07. However, it was the third highest seizure weight on record. The decrease in seizure weight was largely due to the record single seizure of 4,422 kilograms of MDMA in 2006-07 made in Victoria. Consequently, Victoria reported both the greatest reduction in seizure weight and numbers in 2007-08. The drop in both number and weight of seizures in 2007-08 does not necessarily indicate that Victoria was more successful than the other jurisdictions in controlling the production of ATS, but it does demonstrate the volatile nature of such statistics. Removing the anomaly of the 2006-07 data, the comparison of the 2005-06 and 2007-08 data indicated that number of seizures for Victoria increased from 795 to 893 (12.3 per cent) and the weight of seizures decreased from 493,737 to 394,780 kilograms (25 per cent).

The increase in the number of seizures, together with total weight of ATS seizures decreasing in Victoria, could be an indication that ATS manufacturers have changed their distribution methods. By carrying smaller quantities in each location, this decreases potential losses when a location is detected and raided. The increase in the number of seizures, however, indicates that the number of locations could have increased, suggesting that the availability and accessibility of ATS could be on the rise. This is supported by the findings in the 2008 Australian Drug Trends – Findings from the IDRS Report which reported that Victorian respondents to the survey indicated that methamphetamines are easily available.

2.4 Societal costs associated with ATS

The manufacturing and trafficking of ATS impose both tangible and intangible costs on the community, businesses and governments (both at the State and Territory and the Federal level). These costs include:

- to the community – increased crime rate, family problems/issues/welfare, social unrest; and deaths and suicides related to drugs abuse;
- to businesses – uncertainty regarding business safety and loss of employee productivity; and
- to Governments – decline in social welfare (the general welfare and wellbeing of the community), drug related abatement/rehabilitations costs, loss of economic productivity and higher governance costs.

2.4.1 The use of ATS

The latest Australian National Drug Strategy Household Survey 2007 (NDSHS)²⁴ reported that ATS abuse affects a wide range of people but is most prevalent among the more vulnerable pockets of the population, the young and impressionable as well as people in disadvantaged or

²⁴ The Australian Institute of Health and Welfare 2007, *National Drug Strategy Household Survey*

difficult situations such as party-goers, certain occupational groups such as transport, shift workers, sex workers, people with pre-existing mental illness and indigenous people.

According to the National Amphetamine-Type Stimulant Strategy 2008-2011, there is growing evidence about a range of adverse health-related impacts resulting from ATS abuse, including cardio-vascular problems, mental health problems, cognitive impairment and aggression and violence. The strategy notes that a large proportion of ATS dependent people will experience psychological problems including anxiety, depression and psychosis. Frontline services (treatment centres, emergency departments and law enforcement agencies) report significant resource demands caused by amphetamine psychosis.

2.4.2 ATS use and arrests

ATS use has been linked to violent behaviour as shown in a 2008 study by the National Drug Law Enforcement Research Fund²⁵ where 400 regular methamphetamine and heroin users from the Sydney region were interviewed about their life and most recent experience of violent victimisation and offending. While the study showed that 95 per cent of the sample had been victims of violence, nearly 46 per cent had experienced recent victimisation in the past 12 months, and an overwhelming majority had been victimised on multiple occasions. Methamphetamine use was found not to be a significant risk factor for violent victimisation. Instead, major predictors of violent victimisation among illicit drug users were severity in alcohol use, predisposition towards antisocial conduct and drug dealing. However, methamphetamine use was found to significantly increase the risk of violent offending in the past 12 months, particularly among more frequent methamphetamine users. Consistent with this finding, users of methamphetamine were also at a greater risk of being arrested for assault and weapon offences (in the preceding 12 months) and committing violent crime (within the past month). More generally, the study also found that 82 per cent of illicit drug users had committed a violent crime and approximately 40 per cent had violently offended in the past 12 months.²⁶ The findings of the study seem to indicate a positive correlation between violent behaviour and drug use.

The use of ATS poses significant problems for the Australian community as drug abuse has been linked to criminal activities, which impose costs on the community. In 2004, a report by the Australian Government Attorney-General's Department (AGD)²⁷ established the correlation between drug abuse and crime. The report focused on the link between drug use and other forms of criminal activity and not on the use of illicit drugs per se (which is a criminal offence in itself). To the extent that there is a relationship between drugs and criminal activities, the report noted that:

- there was general agreement in the literature and the key informant interviews that there is strong evidence of a correlation between these two variables. However, there is general agreement in the Australian and overseas literature that the precise nature of the relationship between these two phenomena is more complex and less well understood;

²⁵ National Drug Law Enforcement Research Fund 2008, *Comparative rates of violent crime amongst methamphetamine and opioid users: Victimisation and offending, Monograph Series No. 32*, an initiative of the National Drug Strategy.

²⁶ *ibid*, pp. iv–v.

²⁷ Australian Government Attorney-General's Department 2004, *The Relationship between Drugs and Crime*.

- the relationship between illicit drugs and crime is very complex and illicit drug use and crime are mutually reinforcing — both can precede and reinforce the other;
- many different data sources establish that there is a ‘raw correlation’ between illicit drug use and crime. Thus, studies often find that a majority of offenders have used illicit drugs at some time in their lives and a lower, but still quite large, proportion have used illicit drugs in a shorter period before the offence (or at least before their detention or interview by the researcher). However, this correlation does not necessarily amount to causation in itself. Overall, it is probably preferable to use the terms ‘association’, ‘link’ or ‘relationship’ in describing the drugs/crime nexus rather than ‘causation’;
- there are no necessary or inevitable causal links between licit and illicit drugs and crime. Most drug users are not otherwise involved in criminal activity, and there is little evidence that drug use in and of itself causes people to commit crimes, or that criminal activity in and of itself causes people to use drugs. Nonetheless, drugs do play an important role in violent and property crime. Further, the drug-using offending population commits a disproportionate amount of crime;
- the limited amount of Australian material directly relating to this topic limits the conclusions that can be drawn; and
- there are some well-recognised methodological limitations of both the Australian and overseas research, including the lack of random samples, the reliance on self-report data, the use of administrative data, and the focus on descriptive, rather than causal, research.

Keeping these limitations in mind, the report revealed that several Australian studies on the prevalence of drug use by criminal populations had shown that:

- a majority of those in the samples had used illicit drugs at some stage of their lives²⁸;
- compared to the proportion that had ever used illicit drugs, smaller but still sizable proportions had used drugs in the period before their offence/detention/interview:
 - the 1999–2001 Drug Use Monitoring Australia report showed that, for the three drugs - amphetamines, cocaine and opiates - based on the sample of police detainees interviewed, 70.3 per cent had tried at least one of these drugs, 55.5 per cent had used at least one of these drugs in the 12 months before the interview, 43.9 per cent had used at least one of these drugs in the past 30 days, and 40.7 per cent tested positive to drug use^{29 30};

²⁸ Studies include: (1) Loxley W & Lien D 2001, *Drug Use Monitoring in Australia; Western Australian 2000 Report on Drug Use Among Police Detainees*, NDRI, Perth, pp. 94-5. (2) Makkai T 1999, *Harm Reduction in Australia: Politics, Policy and Public Opinion*, in Inciardi J & Harrison L (eds) *Harm Reduction and Drug Control: Concepts and Policies*, Sage Publications, California, p. 108.

²⁹ Makkai T 2002, *Illicit Drugs and Crime*, in Graycar & Grabosky P (eds) *The Cambridge Handbook of Australian Criminology*. Cambridge University Press, Cambridge, p. 118.

- the proportions using illicit drugs were much higher than in the general population; and
- poly-drug use was common – both combinations of illicit drugs³¹ and combinations of alcohol and illicit drugs³².

There has been an increase in the number of ATS related arrests. Table 2-3 shows that national arrest numbers rose between 2006-07 and 2007-08. Victorian arrests increased by 5.6 per cent over the same period in line with the national increase. This could either indicate better policing efforts resulting in an increase in the number of arrests or that criminal activities over the period have increased. In absolute number of arrests, Victoria has the third highest number of arrests, following Queensland and New South Wales.

Table 2-3: Number and percentage change of national ATS related arrests, 2005-06 and 2006-07

State and Territory ^a	Arrests ³³		Percentage change (per cent)
	2006-07	2007-08	
NSW	3,416	3,704	8.4
VIC	3,407	3,599	5.6
QLD	4,437	4,333	-2.3
SA	500	622	24.4
WA	3,011	3,302	9.7
TAS	179	179	0.0
NT	134	175	30.6
ACT	132	133	0.8
Total	15,216	16,047	5.5

a - Includes seizures by state/territory police and AFP for which a valid seizure weight was recorded.

Source: Australian Crime Commission 2009, Illicit Drug Data Report 2007-08, p. 35

³⁰ The most recent 2007 Drug Use Monitoring in Australia report indicated a continuing relationship between drug use and criminal activities. It was reported that 48 per cent of adult detainees who said they were charged with an offence in the past 12 months had taken drugs prior to committing at least one of the offences for which they were charged, 15 per cent of adult detainees said they were looking for drugs prior to arrest and one third attributed at least some of their offending to their drug use (excluding alcohol).

³¹ Studies include: (1) Fitzgerald & Chilvers M 2002, *Multiple Drug Use Among Police Detainees*, Crime and Justice Bulletin No 65, BoCSAR, Sydney. (2) Makkai T 2001, *Drug Use Amongst Police Detainees: Some Comparative Data, Trends and Issues in Criminal Justice*, AIC, Canberra. (3) Loxley W 2001, *Drug Use, Intoxication and Offence Type in Two Groups of Alleged Offenders in Perth: A Pilot Study*, The Australian and New Zealand Journal of Criminology, 34(1):91–104.

³² Loxley W 2001, *Drug Use, Intoxication and Offence Type in Two Groups of Alleged Offenders in Perth: A Pilot Study*, The Australian and New Zealand Journal of Criminology, 34(1):91–104.

³³ According to the ACC Illicit Drug Data Report 2006-07, ‘arrest’ incorporates all recorded law enforcement action against a person for suspected unlawful involvement in illicit drugs. It includes enforcement action by way of arrest, summons, diversion programs and specific offence and expiation provision in the ACT, the Northern Territory and Queensland. DOJ understands the term ‘unlawful involvement’ to cover the possession, use and manufacture of ATS, but not to include related crimes such as property crimes which would be recorded separately.

In 2007, the Victorian Government proclaimed amendments to the *Drugs Poisons and Controlled Substances Act* which created new offences to prohibit the possession of pill presses and prescribed precursor chemicals over prescribed amounts without authorisation or other lawful excuse. The pill press and precursor chemical offences are targeted at people who may be in possession of a pill press or precursor chemical for criminal purposes (that is, the pill press or chemical has already been diverted from legitimate use). By contrast, the new regime to control the supply of precursor chemicals and equipment, which the draft regulations will support, is targeted at ensuring the supply process is transparent and legitimate, to prevent diversion occurring.

Section 2.4.3 will explore the costs associated with the use of ATS, including costs imposed by ATS related criminal activities. The 2008 Collins and Lapsley study³⁴, which is explored in more detail in Section 2.4.3, showed that ATS related criminal costs made up nearly 60 per cent of all tangible social costs associated with the use of ATS in 2004-05. The new regime to control the supply of precursor goods could potentially address some of these societal costs, to the extent that it is able to prevent the diversion of precursor chemicals and equipment into local ATS production.

2.4.3 Social costs associated with the use of ATS

In their most recent report prepared for the Department of Health and Ageing (2008) on the social costs of drug abuse in Australia, David Collins and Helen Lapsley have attempted to quantify the various costs imposed on the Australian community as a result of tobacco, alcohol and illicit drug abuse.

The 2008 Collins and Lapsley study is the fourth study by the authors of the social costs of drug abuse in Australia (previous studies were conducted for the years 1988, 1992 and 1998/99).

It should be noted that the study has limitations in that it provides quantification of tangible and intangible social costs associated with illicit drugs abuse as a group for Australia and does not provide costs that are specifically related to ATS use nor ATS abuse costs by state and territory. However, the Collins and Lapsley series of studies is widely considered the authoritative research on social costs of drug abuse in Australia due to its replication over a number of years, its use of internationally recognised methodologies, and the international standing of the authors.

In their 2008 report, Collins and Lapsley found links between illicit drug abuse and social costs. It should be noted that Collins and Lapsley measured costs according to their definition of 'causation' and this should be taken into account when analysing the results³⁵. The report

³⁴ Collins, D, Lapsley, H (2008), The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05, Department of Health and Ageing 2008

³⁵ Collins, D, Lapsley, H (2008), The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05, Department of Health and Ageing 2008, provides the following guidance for a definition of 'causation':

accounts for the social costs of alcohol, tobacco and illicit drug abuse and also provides a measure of attributed cost proportions to each specific factor. The attributed cost proportion is derived from calculating the aetiological fraction³⁶ which explains the strength of the link between each contributing factor to the social costs incurred.

Collins and Lapsley also found that the abuse of illicit drugs imposed a variety of costs on society, including:

- crime costs (policing, use of courts, prison costs, property damage and insurance, forgone productivity of criminals, illicit drug related violence);
- healthcare and accident costs (deaths, hospitalisation costs and potential years of life lost);
- productivity costs (paid and unpaid production costs); and
- resources used in abusive consumption.³⁷

It should be noted that the term ‘illicit drugs’ relates to a range of diverse drugs. Collins and Lapsley acknowledged that it was desirable to disaggregate costs down to the level of individual drugs wherever possible, but the ability to disaggregate was limited by the available epidemiological data. They concluded that, while it was possible to identify some of the effects of individual drugs on mortality rates, potential years of life lost, hospital usage and gross hospital costs, it was not possible at this stage to disaggregate the effects of individual drugs on the costs of ambulances, nursing homes, pharmaceuticals, crime, road accidents and productivity losses.

On the basis of the available aggregated data, and bearing in mind that ATS was only part of the substances included in Collins and Lapsley’s classification of illicit drugs and only accounted for a proportion of the estimated costs imposed by the abuse of illicit drugs, the aetiological fraction calculation showed that 14.2 per cent of crime costs was due to illicit drug abuse alone, in addition to 11.2 per cent of costs that were due to a combination of alcohol and illicit drug use. According to the Australian Federal Police (AFP) Drug Harm Index, ATS abuse accounts of 14.1 per cent of the total harm imposed by illicit drug abuse. It is therefore assumed that ATS abuse would impose 14.1 per cent of costs due to illicit drug abuse estimated in the Collins and

There is no measure or even approximation for causal behaviour for alcohol in DUMA. In terms of illicit drugs, detainees are asked to indicate in the past 12 months how many of their offences were drug-related. They were specifically told to exclude alcohol. They were presented with five possible responses—all of it, most of it, about half of it, some of it and none of it. Previous experience with asking detainees to provide more detailed information, such as in percentage terms, resulted in unreliable data. The most liberal estimate is taken by assuming that, if the detainees indicated some or more of their offending was drug-related, they were assumed to be drug-related. DUCO relies upon individual offenders' accounts of why they committed their crimes.

³⁶ Collins, D, Lapsley, H (2008), The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05, Department of Health and Ageing 2008, provides the following guidance for a definition of ‘aetiological fraction’: The strength of the causal link between abuse of a particular drug and its consequences for a particular health problem is represented by the aetiological fraction. "An aetiological fraction —also known as an attributable proportion or attributable risk—is a form of indirect quantification of morbidity and mortality due to a specified risk factor. In this case the risk factor is the consumption of tobacco, alcohol or an illicit drug" (Ridolfo and Stevenson, 2001, p. 2).

³⁷ Collins, D, Lapsley, H (2008), The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05, Department of Health and Ageing 2008

Lapsley study. Taking into account Victoria's population, a simple estimate of the costs imposed by ATS abuse in Victoria is approximately \$319.5 million³⁸.

The tangible and intangible costs related to illicit drugs and to illicit drugs and alcohol acting together (these latter costs are linked to both illicit drug and alcohol abuse and cannot be separated) are presented in Table 2-4. The total social costs associated with the use of illicit drugs was estimated at over \$9.25 billion (in 2004-05) with crime costs making up more than half of the total estimated social costs.

Table 2-4: Total social costs of illicit drug abuse, 2004-05

Cost category	Illicit Drug (\$ m)	Illicit Drug and Alcohol (\$ m)	Victoria's share of ATS abuse costs (\$ m)³⁹
Tangible costs			
Crime costs	3,644.5	1,057.8	162.5
Healthcare costs	201.7	-	7.0
Road accident costs	527.6	-	18.2
Productivity costs	1,648.9	-	57.0
Resources used in abusive consumption	892.7	-	30.8
Intangible costs			
Loss of life	1,204.7	-	41.6
Pain and suffering (road accidents)	69.7	-	2.4
Total	8,189.8	1,057.8	319.5

Source: Collins and Lapsley 2008, The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05

The study compared the social costs of illicit drug abuse in 1998-99 with those in 2004-05 (using 2004-05 dollars) and showed that the real social costs of illicit drug use rose by 11.35 per cent between 1998-99 and 2004-05.

The Collins and Lapsley report further identified the burden of illicit drug abuse imposed on different sections of the community (households, business and government), as shown in Table 2-5. Only tangible costs were considered when identifying the burden of illicit drug abuse on different sections of the community, as intangible costs are borne by individuals. Victoria's share of ATS abuse tangible costs was estimated to be \$230.6 million.

³⁸ Refer to Table 6-3 for more details on the calculations.

³⁹ Victoria's share of ATS related costs is calculated taking into account Victoria's population as a percentage of Australia's population. Victoria's population stands at 5.427 million, while Australia's population stands at 22.145 million, hence Victoria makes up 24.5 per cent of the population. The calculation also applies the Drug Harm Index of 14.1 per cent that can be attributed to ATS abuse as a proportion of total illicit drug abuse.

Without additional information to indicate otherwise, the proportion of costs borne by different sections of the Victorian community is assumed to reflect what is happening nationally. As shown in Table 2-5, businesses mainly shouldered the burden of illicit drug abuse bearing 49 per cent of illicit drug abuse tangible costs. This would imply that the business community in Victoria would also bear 49 per cent of ATS abuse tangible costs. The rest of the burden was split between the Government, shouldering 41 per cent of costs, and households, bearing approximately 10 per cent of costs. Businesses bore most of the burden due to a reduction in workforce size, absenteeism and reduced on-the-job productivity.

Table 2-5: Burden of illicit drug abuse on households, businesses and the Government

Category of cost	Household (\$ m)	Business (\$ m)	Government (\$ m)	Total (\$ m)
Workforce labour	0.0	1,275.2	347.7	1,622.9
Household labour	495.5	0.0	0.0	495.5
Hospitals	2.8	14.5	69.1	86.5
Medical	11.6	10.6	82.4	104.7
Nursing homes	1.3	0.0	4.9	6.2
Ambulances	1.4	0.5	2.5	4.4
Road accidents	146.3	94.9	21.0	262.2
Crimes	n.a.	986.8	2,212.3	3,199.1
Resources used in abusive consumption	0.0	892.7	0.0	892.7
Total	658.9	3,275.2	2,739.9	6,674.1

Source: Collins and Lapsley 2008, The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05

In addition to crime costs, healthcare and accident costs, productivity losses and resources directed to addressing the abusive consumption of illicit drugs, the use of illicit drugs also had impacts on the Federal and State Governments' budgets. The impact on the Government budgets was calculated as drug-related taxation revenue less drug-related government expenditures. Since illicit drugs contributed no direct tax revenue to the Government, while at the same time causing a reduction in general tax revenue, the presence of illicit drug abuse had only contributed to a negative effect on both Federal and State budgets as shown in Table 2-6.

Table 2-6: Impact of illicit drug abuse on Federal and State budgets, 2004-05

Cost	Illicit drug	
	Federal (\$ m)	State (\$ m)
Net revenue	(299.5)	0.0
Expenditure	127.5	2,264.8
Revenue less expenditure	(427.0)	(2,264.8)

Source: Collins and Lapsley 2008, The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05

2.5 Conclusion

This RIS recognises the need to prevent the diversion of licit precursor chemicals and equipment to the manufacture of illicit drugs, especially ATS, in clandestine laboratories, as it presents major risks and high societal costs to the Australian community, and to overall economic growth in general and in Victoria specifically.

It has been shown that the production of ATS could potentially be on the rise, making ATS easily accessible and available for consumption. Evidence includes:

- The number of ATS laboratories (all sizes) reported in the UNODC annual reports for the period 1999-99 to 2007-08 show that the Oceania region (defined as Australia and New Zealand) contributed to almost half of the proportion of clandestine laboratories detected.
- The majority of ATS in Oceania (88 per cent) were manufactured within the region itself.

In terms of consumption patterns the NDSHS showed that ATS abuse is most prevalent among the more vulnerable pockets of the population, the young and impressionable as well as people in disadvantaged or difficult situations.

It has been shown that the production and use of ATS is linked to criminal activities. There is mounting evidence that ATS related criminal activities have been on the rise:

- Illicit drug users have a tendency to exhibit violent behaviour with frequent users of methamphetamine at a greater risk of committing violent offences.
- The trend in the number of ATS related arrests has been one of growth. National arrest numbers have risen between 2006-07 and 2007-08. Victorian arrests have increased by 5.6 per cent over the period. In absolute number of arrests, Victoria has the third highest number of arrests, following Queensland and New South Wales.

The abuse of ATS imposes significant social costs (especially those related to criminal activities) on the Australian community:

- Total social costs for illicit drug abuse were estimated at over \$9.25 billion nationally in 2004-05. Extrapolating from these figures, the Department of Justice estimates that the social costs of ATS abuse in Victoria were approximately \$319.5 million.
- Crime costs made up nearly 60 per cent of all tangible costs associated with illicit drug abuse.
- Businesses bore the majority of tangible social costs (49 per cent) followed by the Government (41 per cent) and households (10 per cent).

- Illicit drug abuse had a negative impact on the Federal and State governments' budgets, imposing an additional expenditure of \$427 million on the Federal budget and \$2.2 billion on State budgets.⁴⁰

The evidence presented in this section highlights the fact that there has been an increase in the production of ATS. The use of ATS also continues to be significant

While it is important to allocate resources to the policing and detection of the distribution and consumption of ATS, it is equally important to prevent easy access to the chemicals necessary at the start of the production process. Discouraging local production of ATS could prevent easy access and availability of such drugs for consumption and hence the criminal activities that result from the abuse of ATS. Measures that can minimise the production and consumption of ATS would imply a decrease in the social costs imposed by the abuse of ATS. However, the proposed regulations only directly address the social costs associated with the production of ATS and indirectly address some of the social costs of the use of the drug to the extent that there is a link between local production and consumption.

⁴⁰ Note that all costs quoted are attributed to the use of all illicit drugs of which ATS makes up a proportion. It is not possible to draw the proportion of costs imposed from the use of ATS separately. It is not considered appropriate to apportion the Federal and State Government budgets dedicated to ATS specific use using the AFP Harm Index as budgets are set to address a range of drug related issues.

3 Rationale for the regulatory framework

The Victorian Government seeks to reduce the risk of harm to the health, safety and welfare of individuals or the community, especially the risk of harm to vulnerable sections of the community who are key targets and victims of the supply and abuse of illicit drugs. The Government is looking to achieve a reduction in the overall costs to the society, which comes from the harm to health and public safety incurred by the abuse of ATS.

Illicit drugs present high risks to the whole economy⁴¹ in that, increasingly, ATS have become more acceptable in society, especially in environments such as parties, raves and live entertainment venues. As a result, ATS have become more prevalent and easier to access. This is potentially an indication that the current regulatory environment in Victoria governing the supply of precursor chemicals and apparatus, which is based on self-regulation, has not been able to prevent or minimise the manufacturing of ATS using licit precursor chemicals and equipment, which could have led to greater distribution and availability of ATS drugs to the wider community.

The rationales for setting up a regime to govern the supply, storage and record keeping procedures for precursor chemicals/apparatus include:

- reducing ATS abuse social costs to the community – the production of illicit drugs imposes negative externalities and costs to the Australian community. Measures must be put in place in order to reduce the costs imposed on the community from the supply of illicit drugs as a result of the diversion of precursor chemicals and equipment to the production process;
- addressing social welfare objectives – assisting the policing of crimes to reduce the level of criminal activities related to illicit drug production, distribution and consumption by improving information provision;
- ensuring that the Victorian approach will facilitate a movement towards a national framework; and
- addressing the inadequacy of self-regulation for the chemical industry due to its industry structure.

3.1 Reducing ATS abuse social costs to the community

The production of illicit drugs from licit precursor chemicals will present negative externalities in that the manufactured drugs have the potential to impose a variety of costs to the Australian community. Potential costs to the community, businesses and the Government can be grouped as follows:

- increased level of criminal activity and social unrest;
- loss of lives and potential years of life lost;

⁴¹ The Australian Institute of Health and Welfare 2007, *National Drug Strategy Household Survey*

- loss of economic productivity; and
- illicit drug treatment and prevention costs (e.g. healthcare, treatment, rehabilitation and education campaigns).

As indicated in Table 2-4, the Collins and Lapsley report estimated the total social cost due to the use of illicit drugs (not specific to ATS only) to be between \$8.19 billion to \$9.25 billion in 2004-05 (the most recent year for which all relevant data is available). Extrapolating from these figures, the Department of Justice estimates that the social costs of ATS abuse in Victoria were approximately \$319.5 million.⁴²

3.1.1 Criminal activity and social unrest

In an effort to uncover criminal activities relating to illicit drug abuse, in 2006 Victoria Police introduced a new major crime management model that better equipped the force to deal with illicit drug related crime. Three main areas responsible for investigation of ATS related offences are:

- the Dedicated Drug Crime Theme Desk (DDCTD);
- the Drug Taskforce; and
- the Clandestine Laboratory Squad.

The Drug Taskforce and the Clandestine Laboratory Squad both conduct targeted and proactive investigations focused on supply reduction associated with organised crime and recidivist offenders. In conjunction with the Drug Taskforce and the Clandestine Laboratory Squad, the Crime Theme Desk monitors and investigates chemical diversion and acts in a liaison role with the chemical and pharmaceutical industries to report suspect chemical purchases or potential purchases. In 2007, the Victorian Government also introduced amendments (as previously described in section 2.4.2 of this RIS) to the *Drugs, Poisons and Controlled Substances Act 1981*, which created new offences to prohibit the possession of pill presses and prescribed precursor chemicals over prescribed amounts without authorisation or other lawful excuse.

Production

The production of illicit drugs is intrinsically linked to illegal criminal activities, especially the involvement of organised criminal groups. Given Victoria has the largest market share of over 34 per cent⁴³ in the manufacture of chemicals and a 31 per cent⁴⁴ share in the wholesale market for chemicals (the only other state with a bigger market share is NSW with 34 per cent), the availability of chemicals, combined with the relative ease of obtaining chemicals, could potentially divert more illicit drug production activities from other states into Victoria, unless

⁴² Refer to Table 6-3 for more details on the calculation of how the social costs of ATS abuse for Victoria was estimated.

⁴³ IBISWorld Industry Report, Adhesives, *Cleaning and Other Chemical Product Manufacturing in Australia: C2549*, p. 9.

⁴⁴ IBISWorld Industry Report, *Chemical Wholesaling in Australia: F4523*, 16 July 2008. p. 9.

regulatory controls on the sales of precursor chemicals and equipment can be made fully operational.

The ACC⁴⁵ estimated that organised crime costs to the Australian community were in excess of \$10 billion annually (not specific to ATS only). While organised crime groups in Australia are involved in a wide range of other crime, from the theft of valuable natural resources to sophisticated frauds, the drug trade is still an important component of their activities, and this would include the manufacture and distribution of illicit drugs. This is supported by the fact that a majority of amphetamine available in Australia is manufactured locally.⁴⁶

Consumption and distribution

Statistics show that there has been an increase in ATS related arrests of consumers and providers of illicit drugs both nationally and within Victoria. Table 3-1 show the arrests made between 2006-07 and 2007-08 of consumers and providers of ATS. For Victoria, consumer and provider arrests for illicit drugs increased by 6 per cent and 5 per cent respectively.

Table 3-1: Consumer and Provider ATS Related Arrests by State and Territory

State and Territory	Consumer			Provider		
	2006-07	2007-08	per cent change	2006-07	2007-08	per cent change
NSW	2,338	2,525	8.0	1,065	1,168	9.7
VIC	2,323	2,462	6.0	1,083	1,138	5.1
QLD	3,591	3,653	1.7	846	680	-18.9
SA	184	239	29.9	316	383	21.2
WA	2,160	2,398	11.0	851	904	6.2
TAS	108	107	-0.9	69	70	1.4
NT	93	124	33.3	28	24	-14.3
ACT	99	100	1.0	33	33	0.0
Total	10,896	11,608	6.5	4,291	4,399	2.5

Source: Australian Crime Commission Illicit Drug Data Report for 2006-07 and 2007-08.

The increase in criminal activities related to the use of illicit drugs is linked to an upward trend in the availability and prevalence of illicit drugs in recent years. Despite a lack of conclusive evidence linking an increase in local production to an increase in local consumption and hence related crimes, it would still seem reasonable to assume (based on the study by McKetin et al described in Section 2.2.2) that there is a correlation between local production and consumption. With illicit drugs becoming more acceptable and prevalent, criminal activities resulting from the production, distribution and consumption of illicit drugs is unlikely to decrease unless

⁴⁵ Australian Crime Commission 2008, *Organised Crime in Australia*, Australian Government.

⁴⁶ Drug and Crime Prevention Committee 2004, *Inquiry into Amphetamine and 'Party Drug' Use in Victoria Final Report*, Parliament of Victoria.

mitigation measures, such as a regime for regulating the sales and storage of precursor chemical materials, are put in place. The UNODC found that:

“ATS were the second most commonly abused illicit drugs after cannabis. Almost one in ten Australians has tried either ecstasy or meth/amphetamine, while around half a million Australians (3.4 per cent and 3.2 per cent respectively) have taken these drugs in the past year. The prevalence of methamphetamine abuse stabilized in 2004, following an upward trend in the late 1990s, while ecstasy has shown a clear and sustained increase over this time.”⁴⁷

In addition, the ACC reported in its *Illicit Drug Data Report 2007-08* that:

- according to the UNODC, Australia has the highest annual prevalence of ecstasy use in the world⁴⁸;
- ecstasy is the second most commonly used illicit drug in Australia, preceded only by cannabis. Reported ecstasy use is at its highest level on record⁴⁹; and
- the proportion of people using ecstasy is on the rise with reports that, in 2007, 3.5 per cent (0.6 million) of Australians used ecstasy in the previous 12 months (recent use), while 8.9 per cent (1.5 million) had ever used the drug. Despite a minimal increase in recent use, the proportion that had ever used the drug increased significantly from 7.5 per cent in 2004 to 8.9 per cent in 2007⁵⁰.

Cost to society of criminal activities

The Collins and Lapsley report noted that, of all violent offences for which prisoners were incarcerated, 24 per cent were estimated to be attributable to the consumption of illicit drugs (not specific to ATS only). Drugs in total explained 46 per cent of violent crime, with the remaining 54 per cent being explained by non-drug factors.⁵¹

While the Collins and Lapsley study did not attribute these figures to specific drug types, the most recent Drug Use Monitoring in Australia (DUMA) study⁵² provides an indication of the types of offending associated with ATS use. This study includes self-report questions regarding links between drug use and offending. It found that one in five detainees reported that all of their crimes were amphetamine related. Among these, property crime was most closely related (61 per cent), followed by drug offences (25 per cent) and violent offences.⁵³

⁴⁷ United Nations Office of Drugs and Crime (Regional Centre for East Asia and the Pacific) 2007, *Patterns and Trends of Amphetamine-Type Stimulants (ATS) and Other Drugs of Abuse in East Asia and the Pacific 2006*.

⁴⁸ UNODC 2008, *Amphetamines and ecstasy: 2008 Global ATS Assessment*, Policy Analysis and Research Branch, UNODC, Vienna.

⁴⁹ Australian Crime Commission 2009, *Illicit Drug Data Report 2007-08*, p.23.

⁵⁰ *ibid*, p. 23.

⁵¹ Department of Health and Ageing 2008, *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*.

⁵² Australian Institute of Criminology 2008, *Drug use monitoring in Australia: 2007 annual report on drug use among police detainees*, Research and Public Policy Series No. 93.

⁵³ *ibid*, p. 15.

The Collins and Lapsley report estimated the cost of drug-attributable crimes to Australia, noting that its estimates were substantial underestimates because of considerable under-reporting of crimes to police. Table 3-2 provides a summary of such costs. In 2004-05, crime attributable to consumption of illicit drugs (not specific to ATS only) cost \$4.0 billion. Crime attributable jointly to both illicit drugs and alcohol, where it was not possible to indicate what proportion of these joint costs is attributable to either alcohol individually or illicit drugs individually, cost a further \$1.4 billion (not specific to ATS only). Together, the crime cost to the Australian community attributable to drugs amounted to 0.64 per cent of GDP (not specific to ATS only).

Table 3-2: Summary of selected drug-attributable crime costs, 2004-05 (not specific to ATS only)

Tangible costs	Illicit Drugs (\$m)	Illicit Drugs and Alcohol (\$m)
Police	1,716.9	320.2
Criminal courts	146.8	28.0
Prisons	348.6	146.6
Property	445.4	144.6
Insurance administration	94.6	30.7
Violence	196.1	203.2
Productivity of prisoners	892.1	387.7
Intangible costs	Illicit Drugs (\$m)	Illicit Drugs and Alcohol (\$m)
Loss of life (violence)	130.1	134.8
Total	3,970.6	1,395.8
Relevant costs as a proportion of GDP	0.48%	0.16%

Source: Collins and Lapsley 2008, The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05, p. 49

3.1.2 Loss of lives and potential years of life lost

The Collins and Lapsley report identified 872 deaths attributable to illicit drug use in 2004-05 nationally, with 21 deaths directly attributable to ATS. It should be noted, however, that while ATS abuse attributable deaths make up a small proportion of deaths, the majority (over 70 per cent) of total deaths from illicit drugs cannot be attributed to any specific drug type.

Table 3-3: Loss of lives and potential years of life lost (PYLL)

Types of drugs	Deaths	PYLL (ages 0 – 74)	Classified as ATS?
Opiates	228	9,417	No
Cannabis	1	41	No
Amphetamines	0	0	Yes
Cocaine	0	0	No
Psychostimulants	17	806	Yes
Hallucinogens	1	50	Yes
Other psychotropics	3	132	Yes
Anabolic steroids	0	0	No
Other	139	4,561	Cannot determine exact nature
Licit / unspecified / combined	483	16,498	Cannot determine exact nature
Total	872	31,504	

Source: Collins and Lapsley 2008, The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05

3.1.3 Loss of economic productivity

The use of illicit drugs results in a loss of national productive capacity in the paid workforce as a result of drug-attributable death and sickness (loss of productivity attributed to prisoners being incarcerated as a result of drug related criminal activities have been discussed in Section 3.1.1 and estimated in Table 3-2). Losses are also experienced in the unpaid workforce — that is, in the household sector — from the same causes. These losses should be considered together with savings in resources which would have been consumed had the drug-attributable deaths not occurred. Net production losses represent the gross reduction in productive capacity less these consumption savings.

Table 3-4 presents estimates of the reductions in productive capacity which resulted from drug abuse in 2004-05. Illicit drug use cost the Australian economy \$1.6 billion in paid and unpaid productive work (not specific to ATS only). The cost to the Victorian economy due to ATS abuse can be estimated to be approximately \$57.0 million

Table 3-4: Paid and unpaid production costs of illicit drug abuse 2004-05 (not specific to ATS only)

Labour in the workforce	Costs (\$m)
Reduction in workforce	889.4
Absenteeism	733.5
Total paid production costs	1,622.9
Labour in the household	Costs (\$m)
Premature death	458.5
Sickness	37.0
Total unpaid production costs	495.5
Consumption resources saved	Costs (\$m)
Total consumption resources saved	(469.5)
Total net production costs	1,648.9

Source: Collins and Lapsley 2008, The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05

3.1.4 Healthcare costs

Healthcare costs

Illicit drug-attributable morbidity imposes healthcare costs for medical services, hospitals, nursing homes, pharmaceuticals and ambulances. However, premature deaths caused by drug abuse can relieve the community of some healthcare cost burdens. Had the prematurely deceased been still alive, they would have been placing demands on healthcare resources, demands which have been avoided as a result of the premature deaths. The Collins and Lapsley report estimated these healthcare savings, as well as the healthcare costs as presented in Table 3-5. Health care costs attributed to illicit drug use were estimated at \$201.7 million (not specific to ATS only) in 2004-05. The study also noted that, compared to 1998-99, healthcare costs have dramatically increased over 3.4 times, from \$59.2 million to \$201.7 million. Extrapolating from these figures, the Department of Justice estimates that healthcare costs due to ATS abuse for Victoria are approximately \$7.0 million.

Table 3-5: Illicit drug-attributable healthcare costs 2004-05 (not specific to ATS only)

Illicit drugs	Healthcare costs (\$m)				
	Medical	Hospitals	Nursing homes	Ambulances	Total
Gross costs	122.5	112.6	11.9	6.0	252.9
Savings from premature deaths	17.8	26.1	5.7	1.6	51.2
Net costs	104.7	86.5	6.2	4.4	201.7

Source: Collins and Lapsley 2008, The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05

3.2 Achieving social welfare objectives

3.2.1 Policing of crimes

Illicit drug production and distribution imposes a cost to the Australian community in terms of the expenditure that the Federal and state and territory governments have to make on policing illicit drug activities. Moore (2005) reported:

- Government spending on illicit drug law enforcement activities (not specific to ATS only) was estimated to be \$558.9 million, with the Federal Government spending \$65.7 million and the state and territory governments spending \$493.3 million.
- State and territory government spending (not specific to ATS only) was due to policing related to drug-defined offences (\$226.4 million) and prison expenditures that resulted (\$156.1 million). The third largest component was Federal funding of the Australian Crime Commission, of which \$52.6 million had been attributed to illicit drug-related activities. The remaining law enforcement expenditures were relatively minor components of the category.

The costs considered above relate to those that result from policing and enforcing laws concerned with the illicit status of drugs. Costs associated with policing illegal activities that are a consequence of the use of drugs have not been included.

The Victorian Government is looking to strengthen industry compliance and to close gaps in the ATS precursor chemicals and equipment supply chain that make up the backbone of production and distribution of illicit drugs in Victoria.

It is important to regulate precursor chemicals and equipment as the PACIA/SIA Code is not equipped to ensure member compliance, which is voluntary under the Code. Data suggest that following the introduction of the Code in 1994, domestic clandestine ATS production in Australia exhibited a trend of growth which only started to slow down by 2005-06, after stronger cooperative partnerships between law enforcement agencies were formed. More importantly, the detection of clandestine laboratories in Victoria for all drug production types continued to increase in 2007-08, even though ATS (excluding MDMA) clandestine laboratory detections decreased between 2006-07 and 2007-08. Detections of clandestine laboratories for

all drug production types in Victoria are at an all time high, despite the national trend showing stabilisation.

While law enforcement activities at the end of the illicit drug production/distribution chain have tightened over the years, it is also necessary to tighten regulatory measures at the start of the chain, before licit precursor chemicals are used in the manufacture of illicit drugs. It is therefore important to have measures that control the sales, supply and storage of precursor chemicals and apparatus. This would not only limit the amount of licit precursor materials diverted to illicit drug production, due to increased difficulty in acquiring raw materials, but also aid police in their law enforcement activities by providing adequate documentation or detailed transaction records that could be used as evidence against potential criminals.

3.3 Ensuring that the Victorian approach will facilitate a movement towards a national framework

To date, four states have mandated sales and storage regimes for precursor chemicals and equipment: South Australia, Western Australia, Queensland and New South Wales.⁵⁴ Each state has adopted elements of the PACIA/SIA Code, but with variations specific to each regime.⁵⁵

With only voluntary sales and storage requirements in place (via the PACIA/SIA Code), Victoria currently has less stringent requirements for precursor chemicals and equipment. Implementing a regulatory regime in Victoria based on elements of the PACIA/SIA Code, as other states have done, is aimed at strengthening industry compliance and closing the gaps in the ATS supply chain that assist illicit drug traffickers and manufacturers to access and divert licit precursor chemicals and equipment in Victoria. It would also reduce the risk of diversion activity being displaced from other states to Victoria due to Victoria's lack of corresponding regulatory controls.

As indicated in the ACC's Illicit Drug Data Report 2009, the domestic manufacture of methamphetamine continues to dominate the ATS market in Australia. Domestic production of ATS depends on access to precursor chemicals and equipment. The continued prominence of domestic production as a factor in the supply of ATS in Australia thus is a driver for the proposed national approach to the regulation of precursors.

Precursor trafficking routes tend to follow the path of least law enforcement resistance. If the Victorian approach is not consistent with the approach adopted in other jurisdictions, there is a risk that individuals and groups trafficking ATS precursors in other states could shift their activities to Victoria. The absence of a regulated end user regime could lead to an increase in the number of clandestine laboratories in Victoria by making it easier for illicit drug manufacturers to exploit weaknesses in the precursor supply chain and thus to establish and supply clandestine laboratories. Therefore, it is important that Victoria provides the same level of deterrence as legislative regimes in other jurisdictions.

⁵⁴ *A New Sales and Storage Regime for Precursor Chemicals and Equipment in Victoria*, Discussion Paper, Department of Justice, June 2008

⁵⁵ *Ibid*

The issue of a national framework for precursor control has been raised at the national level in the context of COAG's regulatory reform program. In July 2008, the Productivity Commission released the final version of its report for COAG on national chemicals and plastics regulation. Recommendation 5.8 of the Commission's report recommended the development by the Ministerial Council on Drug Strategy of a nationally consistent set of precursor control regulations for adoption by all jurisdictions.

Work on identifying the essential elements of a consistent national framework is underway, but is necessarily taking some time due to the complexities involved. It is important in the immediate term for Victoria to continue its efforts to strengthen its enforcement response to illicit drug production, as NSW and other states have done. Ensuring that the Victorian regime is similar to NSW's would secure a consistent approach (having similar mandatory sales and storage requirements) across the two states, where the majority of wholesalers and manufacturers of precursor chemicals and equipment are located, and could provide the basis for a future national approach.

3.4 Industry structure and self regulation

As indicated earlier in section 2.3, the PACIA/SIA Code in its original form was developed in 1994 and relaunched nationally in 2002. The key objective of this voluntary industry Code is the establishment of a common system of practice for Australian chemical manufacturers, importers and distributors and scientific equipment and instrument suppliers, to prevent the diversion of chemicals and scientific apparatus to illicit drug production.

In 2000, the Federal Government established a Taskforce on Self-Regulation to inquire into and report on aspects of self-regulation in Australia, chaired by Professor Berna Collier, Professor of Commercial Law at the Queensland University of Technology.⁵⁶

This report included discussion and analysis of the industries where self-regulation works most effectively. The report concluded that self-regulation is less effective where there is a broad spread of smaller businesses that do not communicate with each other.

Industry reports produced by market research company IBISWorld entitled 'Adhesives, Cleaning and Other Chemical Product Manufacturing'⁵⁷ and 'Chemical Wholesaling'⁵⁸ discuss the market concentration of the industry covered by the PACIA/SIA Code, and these reports suggest that, with the exception of Orica, which operates Australia's largest importer and distributor of third party chemicals (in addition to distributing internally manufactured chemicals), most major players within the Australian Chemical Wholesaling industry command a market share of less than five percent reflecting the fragmented nature of the industry and the disparate range of goods distributed.⁵⁹

⁵⁶Taskforce on Industry Self-Regulation 2000. *Industry Self-Regulation in Consumer Markets - Final Report*, Australian Government Treasury. (<http://www.treasury.gov.au/contentitem.asp?ContentID=1131&NavID=>)

⁵⁷ Adhesives, Cleaning and Other Chemical Product Manufacturing: C2549, IBISWorld, March 2008

⁵⁸ Chemical Wholesaling in Australia: F4523, IBISWorld, 2009

⁵⁹ *ibid*

Additionally, the Australian Bureau of Statistics' Business Register indicates that there are a large number of very small business entities in this industry. Business entities with revenue of less than \$0.5 million accounted for over 80 per cent of all business entities in this industry in June 2001.⁶⁰

In light of this industry analysis and the Government report on aspects of self-regulation, the low levels of concentration in the chemicals manufacturing industry do not provide a favourable environment for the success of the current self regulation regime. The proposed regulatory change provides an avenue to increase compliance with the relevant regulation.

Further, the lack of a monitoring mechanism of business compliance with the PACIA/SIA Code and the absence of any incentives/disincentives⁶¹ for businesses to comply with the Code has made it difficult to measure the compliance level and, consequently, the effectiveness of the Code.

The Department of Justice attempted to gain some idea of levels of compliance with the PACIA/SIA Code through an informal survey questionnaire included in a public discussion paper it released in June 2008 on the proposed precursor control regime. However, due to the low level of response to the survey, it was not possible for the Department to draw any meaningful conclusions about compliance levels.

3.5 Summary

3.5.1 The risks associated with non-intervention

There are three major risks associated with non-intervention which form the base of the proposed rationale for the proposed regulations. The risk is that failing to implement the regulatory framework for precursors in Victoria could:

- allow dangerous clandestine laboratories to develop and expand within Victoria;
- make it more difficult for law enforcement agencies to curb precursor diversion at its source and to trace suspect precursor sales within Victoria; and
- allow dangerous clandestine laboratories which would have operated in NSW (and other states with sales and storage regimes in place) to move their operations to Victoria in order to take advantage of the more lenient legislation. This could result in increased local ATS production and the societal costs (both direct and indirect) associated with the production and consumption of ATS. The NSW regulation is being used to model these proposed Victorian regulations.

⁶⁰ *ibid*

⁶¹ Incentives are additional benefits that businesses derive from complying; for example, if this allows them to differentiate their products and charge higher prices. Disincentives could be in the form of penalties for non-compliance such as being de-listed from being a member of the industry association or fines.

3.5.2 The nature and extent of the risks

While it is difficult to quantify the potential impacts and extent of these impacts, it is likely that the absence of regulatory controls over precursor chemicals and equipment could, over time, contribute to a rise in the number of clandestine laboratories in Victoria. The steady increase in the number of clandestine laboratory detections for all drug production types in Victoria in recent years, as highlighted in the Illicit Drug Data Report 2007-08, indicates that such a trend is currently occurring.

Moreover, if Victoria does not have a consistent approach to the sale and storage of precursor chemicals and equipment compared to other states, in that it takes a regulatory approach in mandating sales and storage requirements for precursor chemicals and equipment (with similar sales and storage requirements), it increases the probability that illicit drug production may be moved into Victoria and the associated social costs attributed to the production and consumption of ATS imposed on Victoria will increase as a result.

4 Objectives of the regulatory framework

4.1 Policy objectives of the regulatory framework

The aim of the legislation is to implement a regulatory framework for a sales and storage regime for precursor chemicals and equipment that prevents the diversion of precursor goods to illicit drug production and promotes regulatory consistency for businesses and consumers.

The policy's primary objectives are to:

- reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production; and
- ensure that the Victorian approach will facilitate a movement towards a national framework;

The policy's secondary objectives are to:

- improve information available to assist law enforcement; and
- minimise the additional administrative burden imposed on businesses.

1. Reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production

The rationale for regulation focuses on reducing the social costs associated with the illicit drug manufacture and aligning the private incentives of chemical suppliers/wholesalers and end-users with social objectives (e.g minimising crime). The strength of the proposed regulations is to support the implementation of the new regime's requirements and the mandating of compliance through the ability to enforce offences established by legislation. This should provide a substantial deterrent to non-compliance by suppliers.

The new regulatory regime has the potential to significantly reduce the diversion of precursor chemicals and equipment to clandestine laboratories operating in Victoria. However, if the proposed regulations were not introduced, the regime would remain inoperable, which would provide illicit drug manufacturers with more opportunities to access chemicals and equipment.

The compliance levels for the current self-regulatory regime are not clear, and evidence has suggested that self-regulation is not ideal for industries with low levels of concentration. The fact that industries covered by the voluntary PACIA/SIA Code fit that description suggests that stronger deterrents are necessary to improve compliance and decrease the numbers of clandestine laboratories, which will ultimately help to limit the supply of ATS drugs in the community.

2. Ensure that the Victorian approach will facilitate a movement towards a national framework

All other states (excluding Tasmania) have introduced regulation in this area. Victoria risks becoming a focal point for chemical and equipment diversion due to its lack of stringency. Clandestine laboratories may move operations to Victoria in order to take advantage of the lack of regulation. The Victorian regime and the proposed regulations are modelled on provisions in the NSW regulatory scheme, including similar lists of chemicals and apparatus.

Precursor trafficking routes tend to follow the path of least law enforcement resistance. Victoria, having a less stringent regime than other jurisdictions to control the sale and storage of precursors, is at risk that individuals and groups trafficking ATS precursors in other states could shift their activities to Victoria.

The failure to fully implement a precursor control regime could lead to an increase in the number of clandestine laboratories in Victoria by making it easier for illicit drug manufacturers to exploit weaknesses in the precursor supply chain and thus to establish and supply clandestine laboratories. The continued increase in the number of clandestine laboratories for all production types detected in Victoria, as indicated in the Illicit Drug Data Report 2007-08, provides evidence that the domestic production of ATS continues to develop within Victoria. This could lead to an increase in the supply of ATS in Victoria. Therefore, it is important that Victoria provides the same level of deterrence as regulatory regimes in other jurisdictions.

The full implementation of the regime would thus make the regulation in Australia's two largest chemical manufacturing⁶² states highly consistent. This high degree of consistency will facilitate a transition towards a national approach.

3. Improve record-keeping procedures to assist law enforcement

Section 3.2.1 highlights the high cost of policing crimes associated with criminal activities linked to the production and consumption of ATS. Hence, the Victorian Government is looking to strengthen industry compliance and to close gaps in the ATS precursor chemicals and equipment supply chain that make up the backbone of production and distribution of illicit drugs in Victoria.

The amendments to the *Drugs, Poisons and Controlled Substances Act 1981*, which were passed by the Victorian Parliament in September 2009, will require suppliers to restrict sales of nominated precursor chemicals and equipment (equivalent to Categories I and II of the PACIA/SIA Code) to account holders and/or customers who provide proof of identification and end user declarations. Cash sales of Category 1 chemicals will be prohibited. Suppliers will also be required to keep records of sales of chemicals or apparatus for 2-5 years, depending on the category of item, and to provide records to police for inspection on request.

It is expected that the information in records over a period of 2-5 years may contribute to intelligence gathering by Victoria Police, by indicating trends in the use of particular chemicals or patterns of access to particular suppliers by criminal networks. In discussions with the Department of Justice, Victoria Police stressed the value of the intelligence derived from end

⁶² Chemical Wholesaling in Australia: F4523, IBISWorld, July 2008

user declarations provided by suppliers. Victoria Police indicated that higher levels of compliance and the ability to inspect records resulting from the proposed regulations would potentially help them both in the gathering of intelligence and the investigation of offences.

4. Minimise the additional administrative burden imposed on businesses

Ensuring consistency with regulatory regimes in other jurisdictions would provide businesses, especially those that operate across different states and territories, with more consistency with regards to meeting the regulatory requirements imposed on businesses in the industries that deal with precursor chemicals and equipment. The proposed regulations have a high degree of consistency with the regulatory regime currently in place in NSW, which accounts for a large proportion of the Australian chemical and plastics industry. This would reduce the additional administrative burden on businesses as the record keeping requirements will now be similar across jurisdictions. Training, record keeping and storage costs would be minimised. Hence, the proposed measure is not expected to impose an unnecessarily high cost to businesses that will adversely impact on their competitiveness and profitability.

5 Options to Achieve Objectives

This section will first discuss and summarise the current approaches adopted by other jurisdictions in Australia. The current approach by Victoria, which is defined as the base case (status quo), will also be discussed and the alternative options presented. The alternative options considered are all relative to the base case.

The options considered are:

- Option 1 – the proposed regulations approach
 - Introduce regulations mandating sales and storage procedures for prescribed categories of precursor chemicals and equipment based on elements of the PACIA/SIA Code. The prescribed list will be contained within the regulations. The prescribed categories of precursor chemicals and equipment will be determined by the Department of Justice and relevant Ministers and it will be at the discretion of the Department and Ministers, taking into account any advice from the Australian Government assessments, to include or remove any precursor chemicals or equipment.
- Option 2 – the co-regulatory approach
 - Introduce a co-regulatory regime where the industry associations (PACIA and SIA) establish the chemicals and apparatus to be included in the regulatory framework and the Government monitors and enforces industry compliance. Regulations would give effect to the PACIA/SIA Code and make compliance mandatory.
- Option 3 – the non-regulatory approach
 - Implement an awareness campaign to educate and encourage industry participation in the voluntary PACIA/SIA Code and only introduce a regulatory regime when a national approach has been agreed upon.

5.1 Approaches adopted in other Australian jurisdictions

Four states have mandated sales and storage regimes for precursor chemicals and equipment: South Australia (SA), Western Australia (WA), Queensland (QLD) and New South Wales (NSW). The states mandated sales and storage requirements at different times over the last 15 years:

- Western Australia – 2004;
- South Australia – 1997 (updated 2008);
- Queensland – 1995; and
- New South Wales – 2002 (updated 2007).

Each state implements elements of the PACIA/SIA Code with variations specific to each regime. Broadly speaking:

- Supply of chemicals
 - Supply of chemicals classified as Category I chemicals in the PACIA/SIA Code is restricted in NSW, SA and WA to account customers who provide an end user declaration (EUD) and proof of identity.
 - Supply of chemicals and equipment classified as Category II in the PACIA/SIA Code may be supplied in NSW, SA and WA to non-account customers if an EUD is provided.
 - In QLD, the supply of a single category of controlled substances requires a written order (or EUD) and proof of identity.
- Records and documentation
 - The period for which records must be kept varies in each state. In QLD, written orders for controlled substances must be kept for two years. In NSW, SA and WA, EUDs for Category I equivalent items must be kept for five years. A retention period for Category II equivalent items is specified in WA (five years) and NSW (two years).
- Storage
 - Storage requirements are specified in NSW, SA and WA, with Category I equivalent items to be stored securely with restricted access. Written access authorisations must be kept for five years in SA and WA and for two years in NSW.
- Penalties
 - Penalties vary between the regimes. NSW makes a distinction between penalties for corporations and individuals, and both NSW and WA make a further distinction between first and subsequent offences. Across the regimes, the range of fines is from approximately \$3,000 to \$15,000.

Table 5-1 provides a comparison of the various regimes in these jurisdictions.

Table 5-1: Summary of current legislative regimes

	State specific legislation and regulation				National code
	Queensland	South Australia	Western Australia	New South Wales	PACIA/SIA Voluntary Code
Current legislation and regulation	Drug Misuse Act 1986 Drug Misuse Regulation 1987	Controlled Substances Act 1984 Controlled Substances (Poisons) Regulations 1996	Misuse of Drugs Act 1981 Misuse of Drugs Regulations 1982	Drug Misuse and Trafficking Act 1985 Drug Misuse and Trafficking Regulation 1986	Code of Practice for Supply Diversion into Illicit Drug Manufacture
End user declaration (EUD) regime	Supplier must control supply as follows: Controlled substance: EUD and proof of ID required; photo ID required if recipient is an individual EUD must be given to CCP as soon as practicable after obtaining EUD If employee intentionally or recklessly fails to comply with information requirements, employee commits offence Offence for recipient to provide false or misleading information	Seller must control supply as follows: 17B precursors: account and EUD required - no cash sales; proof of ID required; seller must complete seller's section of EUD and be satisfied person collecting is purchaser or collection agent 17C precursors: EUD required; proof of ID required; seller must complete seller's section of EUD (Note: certain 17B precursors are also 17A precursors, which can only	Supplier must control supply as follows: Category 1 item: account and EUD required - no cash sales; proof of ID required; supply delayed 24 hrs Category 2 item: account or EUD required; proof of ID required CCP to receive copy of Cat 1 EUD within 24 hours & Cat 2 EUD as soon as practicable Offence for purchaser to provide false or misleading information	Supplier must control supply of precursors as follows: Schedule 1 chemical: account and EUD required – no cash sales; proof of ID required; supply delayed 24 hrs Schedule 2 chemical: account or EUD required; proof of ID required Schedule 3 apparatus: account or EUD required; proof of ID required	Category I precursors to be sold to account customers with EUD; supply to be delayed 24 hours; EUDs retained for at least two years. Category II precursors and apparatus must have EUD when sold to non-account customers.

	State specific legislation and regulation				National code
	Queensland	South Australia	Western Australia	New South Wales	PACIA/SIA Voluntary Code
		be sold or supplied with Minister's permit and only to purchaser with Minister's permit to possess)			
Content and retention of EUD	<p>Recipient's name & address; ID details; date & number of written order; name, quantity & intended use; serial number of apparatus; date supplied</p> <p>Supplier must keep EUD for 2 years</p>	<p>Name & quantity of product; intended use; names of purchaser & collection agent ID details; seller's section to verify proof of ID sighted</p> <p>Seller must keep EUD:</p> <ul style="list-style-type: none"> • 17B precursor: 5 years • 17C precursor: N/A 	<p>Name, quantity & intended use; names of purchaser & collection agent, details & copy of ID</p> <p>Supplier must keep EUD:</p> <ul style="list-style-type: none"> • Cat 1 item: 5 years • Cat 2 item: 5 years 	<p>Name & address of receiver; details of ID; name & quantity of chemical; intended use. Sch 1 EUD must contain propose date of supply</p> <p>Supplier must keep EUD:</p> <ul style="list-style-type: none"> • Sch 1 chemical: 5 years • Sch 2 chemical: 2 years • Sch 3 apparatus: 2 years 	<p>Name and address of receiver; proof of ID; name and quantity of chemical; intended use; supplier's declaration that product will not be used to manufacture illicit drugs.</p>
Transaction records	<p>Supplier must issue invoice and keep register with recipient's name and address; order and invoice numbers; company number or ID details; name & quantity of item, intended</p>	<p>For 17B precursor, seller must record name and address of purchaser, name and quantity of precursor and date of sale.</p>	N/A	<p>Supplier must record name and quantity of precursor and date supplied from supplier's premises</p> <p>Supplier must keep transaction records:</p>	

	State specific legislation and regulation				National code
	Queensland	South Australia	Western Australia	New South Wales	PACIA/SIA Voluntary Code
	use and date of supply. Supplier must keep invoice and register for 2 years	Seller must retain record for 5 years		<ul style="list-style-type: none"> • Sch 1: 5 years • Sch 2: 2 years • Sch 3: 2 years 	
Inspections	Environmental health officers may inspect register and documents. Supplier must produce register and documents and must comply inspection, unless supplier has reasonable excuse.	Seller must make transaction record and EUDs available for inspection authorised officers at any time	Police may enter supplier's premises and inspect books & papers including EUDs & access authorisations and stocks of Cat 1 & 2 items	Suppliers must allow police to inspect EUDs and other records during business hours.	Category I transaction details must be made available to government authorities on request.
Storage	N/A	<p>17B precursor: seller must restrict access to persons authorised by seller in writing. Written authorisations must be kept at least 5 years.</p> <p>Seller must arrange stock check after each sale of 17B precursor by person other than the one who handled sale.</p>	<p>Cat 1 item: supplier must restrict access to persons with supplier's written authorisation. Written authorisations must be kept at least 5 years.</p> <p>Cat 2 item: N/A</p>	<p>Sch 1 chemical: supplier must restrict access by anyone but supplier or person authorised by supplier in writing. Written authorisations must be kept at least 2 years.</p> <p>Sch 2 chemical: N/A</p> <p>Sch 3 apparatus: N/A</p>	Parties to Code to provide locked storage for all Category I chemicals, with access restricted or controlled and stock checks undertaken at each access.

	State specific legislation and regulation				National code
	Queensland	South Australia	Western Australia	New South Wales	PACIA/SIA Voluntary Code
Suspicious orders reporting	N/A	Seller must report suspicious enquiries/orders for 17B and 17C precursors to CCP at time of forming suspicion	N/A	N/A	Parties to Code to notify LEAs of suspicious enquiries/orders for all Category I chemicals, Category II chemicals sold to non account customers and Category III chemicals/apparatus in suspicious circumstances.
Therapeutic goods exemptions	N/A	Controls do not apply if 17B or 17C precursor is a therapeutic good packaged and labelled for human or animal consumption, and sale is made to health or veterinary professional	Controls do not apply if Cat 1 or Cat 2 item is packaged and labelled for human or animal therapeutic use, or is required for research or education purposes by research or education institute	Controls do not apply if Sch 1 precursor is packaged and labelled for therapeutic use under therapeutic goods laws and supplier is authorised under those laws	N/A
Loss and Theft	Supplier must report any loss or theft to police within 2 days	N/A	N/A	N/A	N/A
Penalties	20 penalty units 1 st offence or 40 penalty units 2 nd or later offence	Supply offence 17A precursor: selling without permit - \$15,000 or 3 years imprisonment or both; selling to purchaser who does not have possession permit - \$10,000 or 2 years imprisonment or both	\$5,000 for 1 st offence; \$15,000 for subsequent offence	Corporation: 100 penalty units 1st offence or 150 penalty units subsequent offence; Individual: 30 penalty units 1st offence or 50 penalty units subsequent offence	N/A

	State specific legislation and regulation				National code
	Queensland	South Australia	Western Australia	New South Wales	PACIA/SIA Voluntary Code
		Supply offence 17B and 17C precursor: \$10,000 or 3 years imprisonment or both Other offence: \$1,000 or 12 months imprisonment or both			

5.2 Current Victorian approach – The base case

5.2.1 The Voluntary PACIA/SIA National Code

Currently in Victoria, there is no legislation governing the sale and storage of precursor chemicals and equipment.

The principal mechanism currently used in Victoria to guide industry on the risks of diversion, and on preferred practices in respect of precursor sales, storage and record keeping, is the *National Code of Practice for Supply Diversion into Illicit Drug Manufacture* ('the PACIA/SIA Code'). The PACIA/SIA Code is issued by the Plastics and Chemicals Industries Association (PACIA) and Science Industry Australia (SIA), in conjunction with Australian law enforcement agencies. Compliance with the Code is voluntary.

As previously indicated in section 2.3, the PACIA/SIA Code was established in 1994 and has been subject to review to respond to changing trends in illicit drug production, with the most recent update issued in October 2008 and reviewed in October 2009. The Code is intended to be used by scientific equipment suppliers, chemical manufacturers, importers, distributors and laboratory suppliers throughout Australia so that uniform procedures are adopted to facilitate communication with governments and law enforcement agencies. The objectives of the Code are to establish a common system of practice for Australian scientific suppliers and chemical manufacturer, importers and distributors to:

- protect against the diversion of chemicals and scientific equipment to the illicit production of drugs;
- cooperate with government and law enforcement agencies in the controlled delivery of chemicals and scientific equipment destined for use in the illicit production of drugs, where this is expected to lead to the apprehension and conviction of criminals involved in such trade or production; and
- educate and train staff and, where practical, end users of the precursor chemicals as to the issues involved and the procedures to be adopted.

The Code classifies chemicals and ancillary materials known to have been used in the illicit manufacture of drugs into three categories. The following restrictions apply to the various categories of chemicals and equipment:

- Category I chemicals may only be sold to 'account customers' or customers who are prepared to open an account and require an End User Declaration (EUD) with each purchase. Supply of these chemicals to End Users or Distributors must be delayed for a period of not less than 24 hours.
- Category II chemicals and apparatus require an EUD when sold to non-account customers.

- Category III chemicals and apparatus are materials that could potentially be used to manufacture illicit drugs. Purchases from this list should alert companies to seek further indicators of any suspicious orders or enquiries. However, no official reporting is required unless considered warranted.

The Code lists procedures that should be followed for companies/organisations who have agreed to be a party to the Code:

- Sales Monitoring
 - A supplier of chemicals and/or chemical apparatus listed in any of the three categories shall closely monitor all sales within Australia of these goods and comply with the requirements listed for each category.
- Record Keeping
 - For transactions involving Category I chemicals, a record containing the name and address of the purchaser, name and quantity of the Category I chemical, date of supply and completed EUD must be maintained for not less than two years and shall be made available to the appropriate government authorities upon request.
- Notification of Suspicious Orders or Enquiries
 - Companies/organisations must use discretion and draw upon experience to ascertain whether an order or enquiry is 'routine' or 'suspicious'. A checklist 'Some Indicators of Suspicious Orders or Enquiries' is provided in the Code to help identify suspicious orders or enquiries. Indicators in the checklist include, among a list of others, an offer to pay an excessive price for certain chemicals or apparatus for rapid delivery, cash payments, even for large purchases, requests to have the merchandise delivered in non-commercial or unmarked packaging, irregular ordering patterns and unusual quantities ordered and orders or purchases by persons or companies with no obvious need for these chemicals.
 - Companies must notify their jurisdiction's law enforcement agency of any suspicious enquiry or order for all Category I substances, Category II chemical substances and apparatus when sold to non-account customers and Category III chemical substances and apparatus when suspicious circumstances are indicated.
- Storage
 - Companies/organisations are required to provide locked storage for all items listed in Category I. Access to this storage should be restricted or controlled and stock checks undertaken at each access.
- Education and Training
 - Companies/organisations are required to educate and train their staff involved in the storage, handling, sale and use of the chemicals and apparatus listed in the three

categories to take appropriate precautions and to follow procedures that will enable them to cooperate with the Government and law enforcement agencies.

- Companies/organisations are required to ensure as far as practicable that purchasers or users of the items listed, in particular those in Categories I and II, are aware of the potential misuse of the items and the procedures that should be taken to minimise their possible diversion into illicit manufacture of drugs.
- Liaison Officers
 - Companies/organisations are asked to nominate, in each sales outlet, one or more liaison officers (who are of a management level) whose specific responsibility is to ensure that the appropriate systems and procedures are introduced and maintained, that staff members are regularly and effectively trained to facilitate adequate sales monitoring and record keeping; and to ensure that ‘suspicious orders and enquiries’ are reported to the relevant law enforcement agency.
- Incorporation of the Code into company management systems.
 - Companies/organisations that commit to comply with the Code must ensure that the Code is incorporated into the company or organisation internal management systems and procedures. An appropriate level of documentation to integrate the Code into those systems and procedures is to be implemented and maintained by the company or organisation.

5.2.2 The Drugs, Poisons and Controlled Substance Act 1981

In Victoria, drugs and poisons are regulated through the *Drugs, Poisons and Controlled Substances Act 1981*. In 2007, amendments to the Act took effect which created new offences to:

- prohibit the possession of a pill press without authorisation or other lawful excuse; and
- prohibit the possession of a prescribed precursor chemical over a prescribed quantity without authorisation.

The penalty for each of these offences is up to five years imprisonment or a fine of up to 600 penalty units or both.

To support the precursor possession offence, the Victorian Government prescribed 103 precursor chemicals and the quantity of each chemical⁶³. The list of chemicals was developed by the national Intergovernmental Committee on Drugs (IGCD) Scheduling Working Party, in consultation with industry. In prescribing these chemicals, Victoria became the first

⁶³ The relevant chemicals are prescribed in the *Drugs, Poisons and Controlled Substances (Precursor Chemicals) Regulations 2007 (Vic)*.

state to prescribe the full list of precursor chemicals contained in the national model schedule for precursors⁶⁴.

The laws were introduced to assist law enforcement agencies, such as Victoria Police, to tackle amphetamine production at its source and to shut down illegal clandestine drug laboratories, even if the manufacturing process were not completed and the finished illicit drug were not present.

Further amendments to the *Drugs, Poisons and Controlled Substances Act 1981* were made under the Justice Legislation Further Amendment Act 2009 establishing sale and storage requirements for precursor chemicals and equipment. They include:

- the conditions under which Categories 1, 2 and 3 chemicals and apparatus can be supplied to customers (without specifying the list of chemicals and apparatus);
- storage requirements for Category 1 chemicals;
- the period for which transaction records must be kept;
- requirements for suppliers to obtain EUDs from their customers and to check proof of identity supplied by customers;
- the powers given to police members to inspect records; and
- offences and penalties for non-compliance.

These amendments do not take effect until 31 May 2010, when regulations have to be established in order for the amendments to be implemented.

5.2.3 Deficiencies in the current arrangements

Victoria currently does not have any legislation in force regulating the sale and storage of precursor chemicals and equipment. The Department of Justice believes the current arrangements do not adequately prevent or minimise the diversion of licit precursor chemicals and equipment into illicit drug production. Factors relevant to this assessment are summarised below.

- The PACIA/SIA Code is voluntary. Industry participants do not have to comply with the Code. We are not aware of any surveys on compliance conducted among PACIA/SIA members. The expectation is for industry members to adopt self-regulatory arrangements in conjunction with law enforcement agencies and the community, as neither PACIA nor the SIA have the power to actively enforce the Code given its voluntary nature and the fact that no penalty is imposed for non-compliance. The incentive for industry members to adhere to the Code is low. Furthermore, as highlighted in Section 3.4, self-regulation (that is, the

⁶⁴ The national model schedules for drugs, plants and precursors were finalised and presented to the Ministerial Council on Drug Strategy in May 2007.

voluntary Code) is not suitable for the chemical and equipment industries given their highly fragmented nature.

- Law enforcement agencies face a continuing challenge to control the interface between illicit drug manufacturing operations and licit environments.

A better and more targeted measure is needed to control the diversion of licit precursor chemicals and equipment in order to aid law enforcement agencies in their efforts to close down clandestine laboratories and reduce the manufacture of illicit drugs. Regulating the sale and storage of precursor chemicals and equipment, and maintaining transaction records, could reduce the opportunities for illicit drug manufacturers to obtain the materials needed for illicit drug production.

5.3 Option 1 – The proposed approach

5.3.1 Description

The Department of Justice believes the proposed regulations will support an efficient regulatory framework for the sale and storage of precursor chemicals and equipment, as set out in the schedule of nominated precursor chemicals and equipment in the proposed regulations. The objective of the regulatory framework is to minimise the diversion of licit precursor chemicals and apparatus into illicit drug production and hence minimise the costs imposed on society and businesses from the supply and consumption of illicit drugs (ATS).

A risk assessment framework would be put in place under the proposed approach to determine the list of precursor chemicals and equipment that would be regulated. To measure the risk of a precursor being used in illicit drug production, it is likely that factors such as a precursor's ease of use, ease of conversion, hazards of use, availability and cost would all need to be considered. Information about the appeal of precursors to the illicit drug market would also likely be drawn from international trends and data sources such as law enforcement databases. The categorisation of a chemical or apparatus would also need to take into account the impact of legislative controls on legitimate industry. It is important that the categorisation of the chemicals and equipment that are regulated is based on risk in order to ensure that the benefit of including any new chemicals and equipment is likely to exceed the cost. That said, the precise mechanism to be utilised to make such risk assessments on a national basis is yet to be determined and is a matter for the Commonwealth Government.

Implementing the proposed regulations will bring Victoria into line with other jurisdictions in terms of taking a regulatory approach to setting up a framework that would monitor the sales, storage and record management of precursor chemicals and equipment. All other jurisdictions have taken a regulatory approach.

Victoria's scheme is modelled most closely on NSW's and is generally similar in approach to the schemes in other jurisdictions, which are all modelled to varying degrees on elements of the PACIA/SIA Code. The key differences between Victoria's approach and that of other jurisdictions are as follows:

- Number of chemicals: jurisdictions vary in the number and categorisation of chemicals they have regulated. Victoria has adopted the categorisation and listing of chemicals and apparatus provided in the most recent version of the PACIA/SIA Code (issued in October 2008 and reviewed in October 2009) as the most comprehensive and up to date list available at the current time. The categorisation of chemicals and apparatus is consistent with NSW's, but the number of chemicals being regulated has increased due to additions to the PACIA/SIA Code since NSW's regulations were made in 2006.
- Therapeutic goods: Victoria's legislation is constructed differently from other jurisdictions', but has the same outcome in that therapeutic goods are not being regulated under Victoria's scheme. Victoria's legislation specifies that the chemicals subject to regulation are in their raw, unmixed form; hence, Victoria's legislation does not need to provide a general therapeutic goods exemption for packaged therapeutic goods in the way other jurisdictions have done. Victoria's legislation provides the ability to prescribe individual therapeutic goods if necessary (e.g., if a precursor chemical in its raw, unmixed form is packaged and labelled for therapeutic purposes). At this stage, no such therapeutic goods have been identified as requiring prescription.

Other variations between jurisdictions are contained in Table 5-2, which provides a state-by-state comparison.

Table 5-2: State-by-state comparison

	State specific legislation and regulation				
	Queensland	South Australia	Western Australia	New South Wales	Victoria
Current legislation and regulation	Drug Misuse Act 1986 Drug Misuse Regulation 1987	Controlled Substances Act 1984 Controlled Substances (Poisons) Regulations 1996	Misuse of Drugs Act 1981 Misuse of Drugs Regulations 1982	Drug Misuse and Trafficking Act 1985 Drug Misuse and Trafficking Regulation 1986	Drugs, Poisons and Controlled Substances Act 1981 Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010 (proposed)
End user declaration (EUD) regime	<p>Supplier must control supply as follows:</p> <p>Controlled substance: EUD and proof of ID required; photo ID required if recipient is an individual</p> <p>EUD must be given to CCP as soon as practicable after obtaining EUD</p> <p>If employee intentionally or recklessly fails to comply with information requirements, employee commits offence</p> <p>Offence for recipient to provide false or misleading information</p>	<p>Seller must control supply as follows:</p> <p>17B precursors: account and EUD required - no cash sales; proof of ID required; seller must complete seller's section of EUD and be satisfied person collecting is purchaser or collection agent</p> <p>17C precursors: EUD required; proof of ID required; seller must complete seller's section of EUD</p> <p>(Note: certain 17B precursors are also 17A precursors, which can only</p>	<p>Supplier must control supply as follows:</p> <p>Category 1 item: account and EUD required - no cash sales; proof of ID required; supply delayed 24 hrs</p> <p>Category 2 item: account or EUD required; proof of ID required</p> <p>CCP to receive copy of Cat 1 EUD within 24 hours & Cat 2 EUD as soon as practicable</p> <p>Offence for purchaser to provide false or misleading information</p>	<p>Supplier must control supply of precursors as follows:</p> <p>Schedule 1 chemical: account and EUD required – no cash sales; proof of ID required; supply delayed 24 hrs</p> <p>Schedule 2 chemical: account or EUD required; proof of ID required</p> <p>Schedule 3 apparatus: account or EUD required; proof of ID required</p>	<p>Supplier must control supply as follows:</p> <p>Category 1 chemical: account and EUD required – no cash sales; proof of ID required; supply delayed 24 hrs</p> <p>Category 2 chemical: account or EUD required; proof of ID required</p> <p>Category 3 apparatus: account or EUD required; proof of ID required</p> <p>Note: the categories of chemicals and apparatus above and the required content of EDUs will be prescribed in the proposed regulations. All other aspects of Victoria's scheme are legislated in the Act.</p>

	State specific legislation and regulation				
	Queensland	South Australia	Western Australia	New South Wales	Victoria
		be sold or supplied with Minister's permit and only to purchaser with Minister's permit to possess)			
Content and retention of EUD	<p>Recipient's name & address; ID details; date & number of written order; name, quantity & intended use; serial number of apparatus; date supplied</p> <p>Supplier must keep EUD for 2 years</p>	<p>Name & quantity of product; intended use; names of purchaser & collection agent ID details; seller's section to verify proof of ID sighted</p> <p>Seller must keep EUD:</p> <ul style="list-style-type: none"> • 17B precursor: 5 years • 17C precursor: N/A 	<p>Name, quantity & intended use; names of purchaser & collection agent, details & copy of ID</p> <p>Supplier must keep EUD:</p> <ul style="list-style-type: none"> • Cat 1 item: 5 years • Cat 2 item: 5 years 	<p>Name & address of receiver; details of ID; name & quantity of chemical; intended use.</p> <p>Sch 1 EUD must contain propose date of supply</p> <p>Supplier must keep EUD:</p> <ul style="list-style-type: none"> • Sch 1 chemical: 5 years • Sch 2 chemical: 2 years • Sch 3 apparatus: 2 years 	<p>Name & address of receiver; details of ID; name & quantity of chemical; intended use. Cat 1 EUD must contain propose date of supply</p> <p>Supplier must keep EUD:</p> <ul style="list-style-type: none"> • Cat 1 chemical: 5 years • Cat 2 chemical: 2 years • Cat 3 apparatus: 2 years
Transaction records	Supplier must issue invoice and keep register with recipient's name and address; order and invoice numbers; company number or ID details; name & quantity of item, intended	For 17B precursor, seller must record name and address of purchaser, name and quantity of precursor and date of sale.	N/A	Supplier must record name and quantity of precursor and date supplied from supplier's premises	Supplier must record name and quantity of precursor and date supplied from supplier's premises (note: these requirements will be specified in the proposed regulations).
				Supplier must keep transaction records:	Supplier must keep transaction records—

	State specific legislation and regulation				
	Queensland	South Australia	Western Australia	New South Wales	Victoria
	use and date of supply. Supplier must keep invoice and register for 2 years	Seller must retain record for 5 years		<ul style="list-style-type: none"> • Sch 1: 5 years • Sch 2: 2 years • Sch 3: 2 years 	<ul style="list-style-type: none"> • Cat 1: 5 years • Cat 2: 2 years • Cat 3: 2 years
Inspections	Environmental health officers may inspect register and documents. Supplier must produce register and documents and must comply inspection, unless supplier has reasonable excuse.	Seller must make transaction record and EUDs available for inspection authorised officers at any time	Police may enter supplier's premises and inspect books & papers including EUDs & access authorisations and stocks of Cat 1 & 2 items	Suppliers must allow police to inspect EUDs and other records during business hours.	Police may enter suppliers' premises without warrant during business hours to inspect records kept in accordance with the regime.
Storage	N/A	17B precursor: seller must restrict access to persons authorised by seller in writing. Written authorisations must be kept at least 5 years. Seller must arrange stock check after each sale of 17B precursor by person other than the one who handled sale.	Cat 1 item: supplier must restrict access to persons with supplier's written authorisation. Written authorisations must be kept at least 5 years. Cat 2 item: N/A	Sch 1 chemical: supplier must restrict access by anyone but supplier or person authorised by supplier in writing. Written authorisations must be kept at least 2 years. Sch 2 chemical: N/A Sch 3 apparatus: N/A	Cat 1 chemical: supplier must restrict access by anyone but supplier or person authorised by supplier in writing. Written authorisations must be kept at least 2 years. Cat 2 chemical: N/A Cat 3 apparatus: N/A

	State specific legislation and regulation				
	Queensland	South Australia	Western Australia	New South Wales	Victoria
Suspicious orders reporting	N/A	Seller must report suspicious enquiries/orders for 17B and 17C precursors to CCP at time of forming suspicion	N/A	N/A	N/A
Therapeutic goods exemptions	N/A	Controls do not apply if 17B or 17C precursor is a therapeutic good packaged and labelled for human or animal consumption, and sale is made to health or veterinary professional	Controls do not apply if Cat 1 or Cat 2 item is packaged and labelled for human or animal therapeutic use, or is required for research or education purposes by research or education institute	Controls do not apply if Sch 1 precursor is packaged and labelled for therapeutic use under therapeutic goods laws and supplier is authorised under those laws	Legislation specifies controls apply to unmixed, raw chemicals – goods packaged and labelled for therapeutic use are not controlled. Provision to exempt therapeutic goods by regulation if necessary.
Loss and Theft	Supplier must report any loss or theft to police within 2 days	N/A	N/A	N/A	N/A
Penalties	20 penalty units 1 st offence or 40 penalty units 2 nd or later offence	Supply offence 17A precursor: selling without permit - \$15,000 or 3 years imprisonment or both; selling to purchaser who does not have possession permit - \$10,000 or 2 years imprisonment or both Supply offence 17B and	\$5,000 for 1 st offence; \$15,000 for subsequent offence	Corporation: 100 penalty units 1st offence or 150 penalty units subsequent offence; Individual: 30 penalty units 1st offence or 50 penalty units subsequent offence	Supply offence: Corporation: 150 penalty units; individual 30 penalty units Other offence: Corporation: 100 penalty units; Individual: 20 penalty units

	State specific legislation and regulation				
	Queensland	South Australia	Western Australia	New South Wales	Victoria
		17C precursor: \$10,000 or 3 years imprisonment or both Other offence: \$1,000 or 12 months imprisonment or both			

The proposed regulations would also have a high degree of consistency with the current regime implemented in New South Wales. Given that Victoria and New South Wales have the largest combined market share for the manufacture and sale of precursor chemicals and materials as discussed in Section 2.1, a high degree of consistency in the regulatory frameworks between the two jurisdictions would promote and provide a framework for a nationally consistent approach in the future. Furthermore, while the Department of Justice is not aware of any evaluations having been conducted by New South Wales or other jurisdictions on how effective their legislative regimes are, it is worth noting that New South Wales police members indicated in discussions at officer level with the Department of Justice that they regarded the legislative regime as an important and necessary part of the suite of measures that had been implemented to minimise the production of ATS in NSW.

Under the proposed regulations, precursor chemicals and equipment would be classified under three categories:

- sale of Category 1 chemicals would be restricted to account customers only. Account customers would be required to produce end-user declarations (EUDs) and proof of identification (ID). Cash sales would not be permitted for items listed in this category;
- sale of Category 2 chemicals would require EUDs and proof of identification when sold to non-account customers; and
- sale of Category 3 equipment would require EUDs and proof of identification when sold to non-account customers.

The chemicals and equipment listed in the proposed regulations under the three categories are the same as those listed in the PACIA/SIA Code under *Category I chemicals* (Category 1 chemicals in the proposed regulations) and *Category II chemicals and equipment* (Category 2 chemicals and Category 3 apparatus in the proposed regulations). The chemicals and apparatus listed in the proposed regulations are categorised according to risk of diversion. The level of risk for each chemical or apparatus is assessed against a range of criteria including its availability in the marketplace and its comparative value in the synthesis process based on issues such as relative ease of use and safety issues.

The Department of Justice understands that the Commonwealth Government is considering options for conducting regular risk assessments of precursor chemicals and equipment, to assist jurisdictions in determining the items that could be regulated under their own regulatory schemes.

The fact that the Commonwealth Government is considering options to institute regular risk assessments of precursor chemicals and equipment implicitly recognises that criminals are highly adaptive and are quick to experiment with alternative substances and new methods of synthesis in illicit drug production when preferred precursors become more tightly controlled.

As the categorisation of the chemicals and equipment is based on risk, more stringent controls on sales, recording and storage are recommended for Category 1 goods. The lists of chemicals and apparatus included under each category are provided in Appendix A. The proposed

regulations will provide a mechanism to ensure that the list can be updated to reflect emerging/changing patterns and trends in the production and manufacture of illicit drugs.

The proposed regulations have the following features:

- they specify Category 1 and 2 precursor chemicals and Category 3 precursor apparatus – regulations 5-7 and Schedules 1-3 of the proposed regulations; and
- they specify information required on the End User Declarations requirements – regulation 8 of the proposed regulations;

It is also proposed that an education and awareness campaign will be implemented with the introduction of the regulations in order to promote compliance. The proposed campaign should assist compliance, particularly as the campaign would highlight the benefits of compliance for industry members in terms of protecting their businesses from exploitation by the illicit drugs market. The penalties for non-compliance would encourage businesses to comply as consequences for non-compliance carry criminal sanctions. The information campaign would comprise three key elements:

- a mail out to industry and peak bodies undertaken by the Department of Justice;
- advertisements in industry publications arranged by the Department of Justice; and
- ongoing advice to industry provided by Victoria Police via its Chemical Diversion Desk.

5.3.2 Regulation features

End-Users Declarations (EUDs)

Implementation of the proposed regulations would restrict the supply of chemicals and equipment listed in the precursor schedule to purchasers who provide EUDs. The EUD must contain details of the name of the chemical or apparatus, purchased quantity, purchaser's details as confirmed by the proof of ID, and the intended use of the chemical or apparatus.

Supply of chemicals equivalent to Category I chemicals in the PACIA/SIA Code are restricted to account customers who provide EUDs and proof of ID. Cash sales would not be permitted for chemicals listed in this category. In addition, the supply of purchased chemicals must be delayed by at least 24 hours. The requirement to delay the supply of Category 1 chemicals for 24 hours is consistent with the PACIA/SIA Code and the NSW regime. It aims to provide a further deterrent to criminal activity by preventing purchasers obtaining immediate access to higher risk chemicals. It also provides the supplier with the opportunity to review the paperwork and to contact police if the sale has raised any concerns, prior to finalising supply. This measure is designed to work in tandem with EUDs and proof of identity checks to deter criminal diversion activity.

Supply of Category 2 chemicals and Category 3 apparatus in the proposed regulations (equivalent to *Category 2 chemicals and apparatus* in the PACIA/SIA Code) are restricted to

account customers, or to non-account customers who provide an EUD and proof of identification.

Storage security and authorisation requirements

The proposed regulations would require suppliers of chemicals to provide a secure storage facility for chemicals listed as Category 1. Access to such chemicals would be restricted to the supplier or a person with written authorisation.

Suppliers would also be required to keep record of the written authorisations for a minimum of two years after expiry.

Management of transaction records

Implementation of the proposed regulations would require retention of transaction records for all three categories of chemicals and equipment. Specifically:

- Category 1 chemicals – sales records and EUDs must be kept for five years;
- Category 2 chemicals – sales records and EUDs must be kept for two years; and
- Category 3 equipment – sales records and EUDs must be kept for two years.

Inspections

Suppliers would be required to make all EUDs, transaction records and written access authorisations records available to police upon request during business hours.

Penalties

Implementation of the proposed regulations would mean that non-compliance to the requirements stated in the regulatory scheme would be an offence. Penalties in the form of fines would be imposed. Applicable penalties range from 20 to 30 penalty units for individuals and 100 to 150 penalty units for companies, depending on the offence. This equates to a range of \$11,682-\$17,523 for violations by companies and \$2,336-\$3,504 for individuals.

Exemption for Therapeutic Goods

Implementation of the proposed regulations would enable exemptions to be issued, if necessary, for certain substances which are supplied and packaged for therapeutic use as stated under the Commonwealth and State therapeutic goods law. At this point, no therapeutic goods have been identified for prescription, since the regulatory scheme will only apply to unmixed chemicals in their raw state and thus will not apply to packaged therapeutic goods containing mixed chemicals.

5.4 Option 2 – The co-regulatory approach

It is proposed under Option 2 that both the Government and the industry associations (PACIA and SIA) have joint responsibility for regulating the sale and storage of precursor chemicals and apparatus.

Under Option 2:

- PACIA and SIA would be responsible for establishing the list of chemicals and equipment to be governed by the regulatory framework;
- the regulations would give effect to the list of precursor chemicals and equipment that PACIA and SIA have established; and
- the Government would be responsible for enforcement and compliance of the regulations.

As PACIA and SIA, and not the Government, would be responsible for revising the list, this option is expected to introduce more flexibility in terms of updating the list of precursor chemicals and apparatus that should be governed by the regulatory framework in order to reflect changes in the production technologies or methods in the illicit drug production market.

The regulatory scheme under Option 1 only prescribes sales, storage and record keeping requirements for chemicals and apparatus currently listed as Category I chemicals and Category II chemicals and apparatus under the PACIA/SIA Code. Category III chemicals and apparatus in the PACIA/SIA Code are not included in the proposed regulations. Under Option 2, if PACIA or the SIA considered that the chemicals and apparatus in Category III posed enough risks in terms of being diverted into illicit drug production, they could choose to include them within the Category 1 chemicals, Category 2 chemicals and Category 3 apparatus listed in the proposed regulations. In addition, the current Code also encourages industry participants wishing to extend or otherwise change the list of chemicals and apparatus included in the three categories to do so as the Code is reviewed annually.⁶⁵

The flexibility of updating the list of regulated precursor chemicals and apparatus implies that the list is more likely to reflect changes in the production technologies or methods in the illicit drug production market. Option 2 could potentially improve on minimising the diversion of chemicals into illicit drug production and hence further reduce the costs imposed on society and businesses from ATS abuse compared to Option 1.

However, the inbuilt flexibility under Option 2 would be likely to result in more frequent changes to the list of precursor chemicals. This could potentially pose additional costs:

- to Government in terms of providing businesses with information regarding changes; and
- to businesses in terms of compliance and administrative costs, and they would need also to ensure that staff were properly trained and informed of any recent changes to the precursor chemicals and apparatus list in order to ensure compliance.

⁶⁵ Chemicals Industries Association (PACIA) or Science Industry Australia (SIA) 2009, *Code of Practice for Supply Diversion into Illicit Drug Manufacture*, p. 6.

The more frequent changes to the list would also increase regulatory uncertainty for businesses. In addition, Option 2 is unlikely to achieve the regulatory framework objective of bringing Victoria in line with other jurisdictions in terms of a regulatory regime as New South Wales currently prescribes the precursor chemicals and apparatus within its regulations in a similar fashion to Option 1.

Co-regulation would also mean that Victoria could not, of its own accord, adopt any schedule of chemicals and apparatus recommended by the Australian Government under a national assessment process as part of the proposed national framework. Victoria is a strong advocate of the move towards a national framework.

The option of co-regulation was not put forward in the discussion paper distributed to industry by the Department of Justice in 2008, and therefore no specific feedback was received by the Department on this option. In its response to the discussion paper, PACIA recommended consistency with the PACIA/SIA Code, but did not advocate incorporation of the Code by reference into Victoria's regulatory scheme (the co-regulation approach). PACIA strongly supported the recommendation of the Productivity Commission, provided in its report to COAG on national chemicals and plastics regulation, that a risk based schedule of chemicals and apparatus be maintained by a committee of experts overseen by the Ministerial Council on Drug Strategy and be adopted in each jurisdiction.

5.5 Option 3 – the non-regulatory approach

5.5.1 Description

In its *Amphetamine-type Stimulants and Related Drugs Strategy 2007-10*, the Victorian Government outlined a comprehensive response to prevent and reduce the use of ATS and related drugs in the Victorian community. As indicated in the strategy, the Victorian Government is keenly aware of the harm and costs imposed by the use of ATS on the Victorian community, and the importance of supply reduction measures to reduce the supply and availability of ATS for consumption, including preventing the manufacture of ATS.

It is proposed under Option 3 that a comprehensive awareness or information campaign would be implemented to increase awareness of the patterns and harms of diversion of ATS use in the community, so that all parties involved in the supply and trading of licit precursor chemicals and equipment could be made aware of the patterns and potential issues caused by diversion of licit chemicals and equipment into illicit drug production. The information campaign would educate all parties involved and enable them to identify and take action to prevent cases of diversion of licit chemicals to the manufacture of illicit drugs. The information campaign would be an effort to encourage increased industry participation in the voluntary PACIA/SIA Code.

The campaign would provide all industry participants with relevant industry information that would enable them to identify and prevent the diversion of licit precursor chemicals and equipment to the manufacture of illicit drugs. It would be essential for the success of the

campaign that the information provided was credible and factual. It has been shown that scare tactics would result in participants expressing scepticism about the campaign.⁶⁶

The information campaign would need to:

- provide appropriate, relevant, credible and factual information that would educate businesses within the chemicals and scientific industries about their exposure to illicit drug production; and
- provide actionable suggestions that would induce greater involvement and empowerment of all industry members in preventing and reducing diversion of licit precursors.

⁶⁶ Duff C, Johnston J, Moore D, Goren N 2007, *Dropping, connecting, playing and partying: Exploring the social and cultural contexts of ecstasy and related drug use in Victoria*, PDPC, Melbourne.

6 Cost Benefit Assessment of the Proposed Options

The cost benefit assessment of the proposed options in this RIS is largely qualitative but indicates that the Department of Justice expects the benefits of the proposed regulations to significantly outweigh its costs. This RIS expects the proposed regulations or the alternative approaches to impact the following stakeholder groups:

- the Victorian Government;
- the chemical industry, the chemical equipment industry and the industry association; and
- the broader community.

It is not possible to conduct a cost-benefits analysis due to:

- the lack of a monitoring mechanism of business compliance with the PACIA/SIA Code making it difficult to ascertain the current compliance level and hence measure the incremental benefits that could result from an increase in compliance level;
- the inability to assess what level of increase in compliance will result from each option; and
- the difficulty of quantifying the potential benefits of the proposal and alternatives, given uncertainty about the extent of the link between local production and consumption of ATS.

Hence the cost benefit assessment is conducted using:

- break-even analysis in sections 6.5.1.1, 6.5.1.2 and 6.5.1.3 to provide an indication of the amount of increase in compliance with the PACIA/SIA Code of Practice or equivalent required for each option to be cost beneficial; and
- a balanced scorecard approach to determine the preferred option as the *Victorian Guide to Regulation* recommends this approach be adopted “where it is not possible to quantify and assign monetary values to the impact of a proposed measure”⁶⁷ which is the case for having a framework which governs the sales and storage procedures for precursor chemicals and equipment.

6.1 Summary

The table below summarises the nature of the key expected costs and benefits for each option for each stakeholder group. Details of the magnitude of potential costs and benefits for each stakeholder group are explored in the sections below.

⁶⁷ Department of Treasury and Finance 2007, *Victorian Guide to Regulation*, Second Edition, April 2007.

Table 6-1: Outline of the nature of the costs and benefits to each stakeholder group

Stakeholder group			
	The Victorian Government	The chemical industry, the scientific equipment industry and the industry associations	The broader community
Option 1 Costs	<ul style="list-style-type: none"> • Costs of implementing and enforcing legislation • Cost of initial awareness campaign and subsequent updates 	<ul style="list-style-type: none"> • Compliance costs • Administration costs • Secure storage costs 	<ul style="list-style-type: none"> • Minimal administrative costs imposed on end users or new account holders
Option 1 Benefits	<ul style="list-style-type: none"> • Contribute to the achievement of Victorian Government's drug policy objectives • Decreased cost of policing and enforcement • Decreased health related expenditure 	<ul style="list-style-type: none"> • More consistent approach to record keeping across jurisdictions 	<ul style="list-style-type: none"> • Decreased health related expenditure may lead to increased spending in other portfolios by the broader community • Decrease in costs of crime associated with drug production and consumption on the broader community • Increase in productivity due to decrease in drug consumption and subsequent effect of consumption on general businesses and the broader community
Option 2 Costs	As with Option 1	Similar to Option 1, due to added flexibility, cost to update industry increased	As with Option 1
Option 2 Benefits	As with Option 1 but likely to be slightly higher	More flexibility with PACIA and SIA listing changes	As with Option 1 but likely to be slightly higher
Option 3 Costs	As with Option 1	No costs	If voluntary approach taken up by industry, same as Option 1
Option 3 Benefits	If voluntary approach taken up by industry, similar to Option 1	If voluntary approach taken up by industry, similar to Option 1	If voluntary approach taken up by industry, similar to Option 1

6.2 Cost benefit assumptions

6.2.1 Overview of the base case

This RIS measures the costs and benefits of the proposed regulations against the current (base case) regulatory framework which includes the voluntary PACIA/SIA National Code.

6.2.2 Estimated size of the chemical related industry

The proposed regulations are set to provide a list of certain chemicals and equipment in Victoria which will be subject to the requirements of the *Drugs, Poisons and Controlled Substances Act 1981*. Appendix A provides a detailed overview of the nature of the proposed regulations.

Industry research has revealed that:

- the chemical wholesaling industry nationally comprised approximately 1,870 wholesalers of which 31 per cent were located in Victoria (second largest state concentration, behind NSW)⁶⁸; and
- the adhesives and chemical manufacturing industry comprised approximately 135 entities located in Victoria (largest state concentration)⁶⁹.

6.2.3 Benchmarking approach used to quantify costs

The benchmarking information available on chemical and equipment wholesaling and manufacturing is extremely limited. Where possible, this RIS explicitly identifies and describes those costs, which the Department of Justice could not quantify directly.

6.3 Victorian Government

6.3.1 Benefits to the Victorian Government

6.3.1.1 Option 1: The proposed regulations

The proposed regulations would provide indirect benefits to the Victorian Government. The proposed regulations complement the Government's drug strategy on minimising the supply and consumption of illicit drugs. Benefits from the proposed regulations include:

- a potential reduction in the resources dedicated to the policing, detection and investigation of criminal activities associated with illicit drug manufacture, supply and consumption;

⁶⁸ IBISWorld 2009, Chemical Wholesaling in Australia: F4523

⁶⁹ IBISWorld, 2009, Adhesives, Cleaning and Other Chemical Product Manufacturing: C2549

- the availability of transaction records that could aid investigations into, and be used as evidence in, illicit drug manufacture criminal cases; and
- a potential reduction in the resources directed to health and emergency services resulting from easy access to, and consumption of, illicit drugs.

6.3.1.2 Option 2: Co-regulatory approach

The co-regulatory approach would offer indirect benefits similar to those of the proposed regulations.

The co-regulatory approach would give force to the list of precursor chemicals and equipment as determined by PACIA and SIA in conjunction with the national Intergovernmental Committee on Drugs (IGCD) Scheduling Working Party. Under the co-regulatory approach, the regulation would simply incorporate this list, therefore automatically giving effect to any changes made by PACIA and SIA.

As discussed in Section 5.4, PACIA and SIA and not the Government, would be responsible for revising the list under the co-regulatory option. This option would be expected to introduce more flexibility in terms of updating the list of precursor chemicals and apparatus that should be governed by the regulatory framework, in order to reflect changes in the production technologies or methods in the illicit drug production market, without the need for regulatory changes each time.

It is uncertain how this added flexibility fits within the potential changes to the risk assessment process (and regularity of that process) for precursor chemicals currently being considered by the Commonwealth Government. It follows that the benefits that could arise from the added flexibility could be higher than under Option 1 if the more frequent updates to the precursor chemical and equipment list, to reflect changes in the production technologies or methods in the illicit drug production market, were able to translate to further reduction in social costs due to ATS abuse.

6.3.1.3 Option 3: The non-regulatory approach

The non-regulatory approach would offer indirect benefits similar to those of the proposed regulations. The difference between the potential benefits to be realised with the non-regulatory approach, when compared to the proposed regulations, is that the mandatory element of Option 1 would increase compliance and therefore increase the probability of realising potential benefits from this approach. This mandatory element is not part of the non-regulatory approach with Option 3; therefore, this incremental benefit would not apply, and the benefits associated with any potential increased compliance are not possible to quantify.

6.3.2 Costs to the Victorian Government

6.3.2.1 Option 1: The proposed regulations

The proposed regulations would have an insignificant impact on the costs of the Government. There is no reporting or monitoring requirement currently being considered. The assessment of precursor chemicals and equipment for future inclusion in the Regulations will be undertaken by the Commonwealth and therefore impose no cost on Victoria.

It is anticipated that the Government would incur a small cost for the education and awareness campaign when the regulations are introduced and also each time the precursor chemical and apparatus list is updated. This education and awareness program would aim to promote compliance and increase awareness of changes to the regulations. We anticipate that the Option 1 chemical and apparatus list will be updated twice within the regulatory period before sunseting of these regulations. The Department of Justice estimates that it would likely cost approximately \$7,000 for printing, copying and the mail out, and approximately \$8,000 for advertisements, making an estimated total cost of \$15,000. In addition to the above costs, there is a possibility of an increase in the requirement for police resources. This may occur after the regulations have been in place for a period of time and have been successful in providing sufficient evidence for prosecution purposes. The success of the proposed regulations in providing evidence that is useful in law enforcement work would determine the extra police resources dedicated to this method of investigation. This resource currently cannot be quantified. The allocation of resources is entirely a matter for Victoria Police and is decided by the Chief Commissioner of Police according to operational requirements.

6.3.2.2 Option 2: The co-regulatory approach

The co-regulatory approach would incur similar costs as the proposed regulations. We anticipate that the Option 2 chemical and apparatus list will be updated four times within the regulatory period before sunseting of these regulations (every two years⁷⁰). The Option 2 chemicals and apparatus list would be updated more frequently under this option as PACIA and SIA have more inherent flexibility in producing updated lists as no regulatory changes would need to take place in order to update the list, i.e. less impediments to the updating of the lists. Even though the co-regulatory approach would require the precursor chemicals and equipment nominated by PACIA and SIA to be enforced by the Government, the categorisation and nomination of precursor chemicals and apparatus, and the assessment of risk, would remain entirely within the control of PACIA and SIA. This contributes to the limited costs incurred by Government, as outlined above.

The costs incurred by Victoria Police under Option 2, even though unquantifiable (apart from the \$15,000 in education and awareness costs), at this point in time are expected to be similar as under Option 1.

⁷⁰ We understand PACIA and SIA review the chemicals and apparatus list within the code annually. The code has historically been updated every three years, we have taken the average of the two processes (annual review vs three-year updates) to assume changes every two years.

6.3.2.3 Option 3: The non-regulatory approach

The non-regulatory approach would incur the same costs as the proposed regulations. Under Option 3, compliance to the PACIA/SIA Code would be voluntary and hence adherence would not be actively enforced. This contributes to the limited costs incurred by Government.

The cost of the education and information campaign for Option 3 is expected to be the same as Option 1 as it is made up of the same components.

6.4 Businesses

6.4.1 Benefits to the chemical industry, the chemical equipment industry and the industry association

6.4.1.1 Option 1: The proposed regulations

The proposed regulations could decrease the social costs attributed to the production and consumption of illicit drugs that are imposed on the general business sector to the extent that the regulations were successful in minimising the diversion of licit precursor chemicals to the production of illicit drugs, and hence decreasing the availability of illicit drugs for consumption. As discussed in Section 2.4.3, Collins and Lapsley indicated that 49 per cent of the social costs in 2004-05 were borne by the business sector in the form of reduced productivity, higher taxes and uncertainty regarding business safety. The mandatory recording requirements governing the sale and storage of certain chemicals and equipment could minimise the harm and cost that illicit drug abuse would place on society and businesses. However, it is expected that this would be likely to be a small proportion of the total effects that illicit drug abuse had on businesses.

The introduction of regulated record keeping in Victoria would also assist chemical manufacturers or wholesalers who operate across jurisdictions. The record keeping requirements detailed in the proposed regulations would bring Victoria into line with the requirements of most other states. Chemical manufacturers and wholesalers would be able to have a more uniform approach to record keeping, which could minimise transaction costs, as the largest two states would require the same level of administration for each sale captured by the regulation.

6.4.1.2 Option 2: The co-regulatory approach

The co-regulatory approach would offer similar benefits to the general business sector in that it would decrease the social costs attributed to the production and consumption of illicit drugs that are imposed on the general business sector as the proposed regulations. For the purposes of this assessment, we assume that Option 2 provides more flexibility when compared to Option 1. This flexibility could imply that because the more frequently updated list of chemicals is more likely to reflect changes in the production technologies or methods in the illicit drug production market, Option 2 could potentially improve on minimising the diversion of chemicals into illicit drug production and hence further reduce the costs imposed on society and businesses from ATS abuse compared to Option 1.

The benefits that could arise from the added flexibility are unable to be quantified as we are unsure how the ability to update the precursor list more often will translate to incremental potential benefits from a decrease in social costs above those mentioned under Option 1.

6.4.1.3 Option 3: The non-regulatory approach

The non-regulatory approach would offer similar indirect benefits as the proposed regulations. The difference between the potential benefits to be realised with the non-regulatory approach, when compared to the proposed regulations, is that the mandatory element of Option 1 would increase compliance and therefore increase any potential benefits to be derived from this approach. This mandatory element is not part of the voluntary compliance approach with Option 3; therefore, this incremental benefit would not apply, and the benefits associated with any potential increased compliance cannot be quantified.

6.4.2 Costs to the chemical industry, the chemical equipment industry and the industry association

6.4.2.1 Option 1: The proposed regulations

The proposed regulations would increase the costs of the chemical industry participants, but it is anticipated that this increase would be insignificant. The record and storage requirements would require minimal training as only the information to be recorded is prescribed under Option 1 for EUDs. The format in which to record and store the EUD would not be prescribed, to allow suppliers flexibility in their methods of collection and storage. The storage of records for 2-5 years would impose minimal or no incremental costs to businesses (regardless of whether they are currently complying with the voluntary Code) as storage of such records is also required for taxation purposes. Section 262 of the *Income Tax Assessment Act 1936* requires the retention of taxation documentation for five years post-lodgement.

In addition, the storage of records is most likely to be in electronic form, which should be easily supported by software that businesses currently use for taxation purposes.

The costs to businesses are estimated subject to some limitations and assumptions:

- The costs specifically relate to the increased administration and storage costs some industry participants may experience. It is anticipated that most manufacturers and wholesalers will have storage facilities available at their operational sites as they are storing valuable chemicals and equipment with inherent safety requirements. For example, the *Occupational Health and Safety Act 2000* and *Dangerous Goods Act 1985* would require the safe storage of such chemicals and equipment. Therefore, while the proposed regulations mandate storage capabilities for these chemicals and equipment, it is expected to have minimal impact on most industry participants as such measures would have been put in place in light of other legislative requirements. It is recognised, however, that if small businesses do not currently provide secure storage facilities for storing chemicals, the proposed regulations will impose a once-off additional cost to such businesses. However, as no information is available on the number of small businesses that do not currently have storage facilities and

the average cost of installing such facilities, it is not possible to quantify this capital cost. As noted earlier, the Department of Justice attempted to gain some idea of levels of compliance with the PACIA/SIA Code through an informal survey questionnaire included in a public discussion paper it released in June 2008 on the proposed precursor control regime. However, due to the low level of response to the survey, it was not possible for the Department to draw any meaningful conclusions about compliance levels, and hence incremental storage costs cannot be quantified. Of the industry respondents who replied to the department's questionnaire, 40 per cent stated that the financial cost to keep the transaction records and storage procedures are low. Of the remaining respondents, 26.7 per cent stated that cost impacts would be medium, 20 per cent stated cost impacts would be high and 40 per cent did not respond. No trend can be established as to the size of the respondents' businesses and their respective answers to this question. Answers varied equally between small and large businesses.

- Information regarding the current sale and storage practices of businesses, and whether this is likely to vary across different parts of the industry, would also be useful in determining the costs to businesses. The only potential source of information on current sales and storage procedures would be PACIA, SIA or industry participants. As the Department of Justice is not aware of any routine monitoring or enforcement of the Code, this information is not available.
- The requirements for EUD completion and retention would marginally increase the administration time for industry participants. It is anticipated that all companies would currently be completing documentation in relation to each of the sales finalised by their business. The information required in the EUD (e.g. name and address of receiver; details of ID; name and quantity of chemical; intended use) are collected as part of keeping proper sales records for taxation purposes. As such, no additional costs are expected to be imposed on businesses with regard to the EUD completion and retention requirement, other than the requirement to confirm the identification of new customers. This is expected to add a marginal time cost to the current documentation process. Information on the volume of sales transactions that occur for account holders specific to precursor chemicals and equipment within the covered industries is not available. As indicated above, the survey questionnaire issued by the Department of Justice did not elicit a sufficiently large response to enable any meaningful data to be extracted.

Table 6-2: Quantification of the potential costs of the identification requirements

Staff Title	Annual Salary + on costs	Process time % of total day	Annual increase in cost to individual business	Approximate number of industry participants⁷¹	Total cost per year across industry
Administration Assistant	\$40,000 ⁷² *1.75 = \$70,000	=5 minutes per ID check, approximately 2 per day =10 minutes/ 450 minutes in a day = 2.2%	= \$70,000 *2.2% = \$1,540	Chemical Wholesalers = 1,870 ⁷³ nationally x 31% ⁷⁴ VIC = 580 Chemical Manufacturers = 135 ⁷⁵ units TOTAL = 715	= \$1,540 x 715 = \$1,101,100

⁷² <http://www.hays.com.au/salary/pdfs09/Office%20Support.pdf>

⁷³ IBISWorld Industry Report 2009, Chemical Wholesaling in Australia: F4523, pp. 9-10.

⁷⁴ Ibid

⁷⁵ IBISWorld Industry Report 2009, Adhesives, Cleaning and Other Chemical Product Manufacturing in Australia: C2549, pp. 9-10.

Table 6-2 shows the calculation of the potential costs of the identification requirement, which is the only component of the EUD requirement that is likely to impose additional administrative costs to businesses. It is assumed that an administration assistant will perform the ID checks. The salary and on-costs for employing a full time administration assistant is estimated to be \$70,000. It is assumed that two ID check for new customers will be conducted daily and the process takes five minutes. The ID check takes up 2.2 per cent of the administration assistant's time. Hence, businesses incur \$1,540 additional administrative cost per annum. It is estimated that there are 715 chemical wholesalers and manufacturers in Victoria using information from IBISWorld. That equates to approximately \$1.1 million of additional administrative costs imposed on businesses as a result of the EUD requirements.

The incremental costs associated with the storage of the EUDs are expected to be minor as all entities are required to retain documentation related to their annual tax return for five years. The Department of Justice survey results also indicated that 53 per cent of the businesses had records of transactions related to precursor chemicals and equipment, with 60 per cent of them keeping the record more than five years (although it is acknowledged the response rate was too small to allow meaningful conclusions to be drawn from these results). It is not possible to quantify the incremental costs associated with the storage of EUDs although it is expected to be insignificant as businesses are currently expected to retain sale records that contain similar information required in EUDs for up to five years for taxation purposes.

The Australian Tax Office provides the following guidance⁷⁶ on the types of records required to be kept for a minimum period of five years:

- Sales records:
 - sales invoices (including tax invoices);
 - sales vouchers or receipts;
 - cash register tapes, credit card statements; and
 - bank deposit books and account statements.
- Purchase/expense records:
 - purchase/expense invoices (including tax invoices);
 - purchase/expense receipts (which include an ABN);
 - cheque butts and bank account statements;
 - credit card statements; and
 - records showing how you calculated any private use component.

⁷⁶ <http://www.ato.gov.au/businesses/content.asp?doc=/content/24971.htm&page=9&H9>

- Year-end income tax records:
 - motor vehicle expenses;
 - debtors and creditors lists;
 - stocktake sheets;
 - depreciation schedules; and
 - capital gains tax records.

In addition, some training costs would be incurred by businesses in order to inform employees of the new regulations and storage/record requirements. To estimate such costs, the cost of hiring a trainer to educate employees is calculated as a proxy of training costs. It is not possible to quantify employee training time and costs as the average size of a business (representative business) in the industry is not known and it is unclear how many employees per business would be impacted by the regulations on a daily basis. The cost of training is assumed to be a once-off cost and hence would not be included in the threshold calculations presented in Table 6-3. A trainer is assumed to commit three hours to preparing and presenting the relevant material, and informing employees of the changes in requirements. The salary of a trainer is assumed to be \$133,975⁷⁷ per annum. The cost of training is \$206⁷⁸ per trainer per business. Seven hundred and fifteen industry participants would incur a total, once-off training cost of \$147,290. The training cost is assumed to be once-off as it is expected to be incurred at the introduction of the proposed regulations. It is assumed that knowledge about the regulatory requirements would be passed on during the hand-over process or acquired on the job when new staff were hired, together with any relevant information regarding the job. It is not possible to separate the incremental cost of acquiring knowledge associated with the regulatory requirements from all other job relevant knowledge. In addition, no information is available on the turnover rate of staff in the regulated industry; it is therefore not possible to quantify the on-going training cost that relates to the proposed regulation. Nevertheless, the overall costs of training are still relevant to the proposal.

For all subsequent list changes, we assume that the trainer would spend half as much time as they spent on the original training; therefore, subsequent list changes would cost the industry \$73,645. The second training cost is assumed to be incurred approximately every four years (therefore two times before the regulation sunset date in 10 years times), each time the list changes. Total cost for training updates would be \$147,290 (excluding initial training cost).

6.4.2.2 Option 2: The co-regulatory approach

The co-regulatory approach would incur similar types of costs as the proposed regulation. For the purposes of this assessment, we assume that Option 2 provides more flexibility when compared to the preferred approach. This increased flexibility could lead to more regular

⁷⁷ <http://www.hays.com.au/salary/pdfs09/Human%20Resources.pdf>. Salary for a L&D manager is \$115,000. We have added on costs of 16.5% to the annual salary to arrive at \$133,975.

⁷⁸ Total number of paid hours per year is 37.5*52 weeks = 1950. Training cost is (3/1950)*\$133,975 = \$206.

changes to the list of chemicals and equipment as no further bureaucratic or regulatory approval would be required. For the purposes of this comparison, we assume that the increased flexibility means that the list of precursor chemicals and equipment would change twice as often as the list using Option 1. Assuming the PACIA and SIA lists changed twice as often as the list in Option 1, this cost is higher for Option 2. We assume that the cost of subsequent training sessions for updated lists would not be as extensive as the original training session. These changes would increase the training costs described for Option 1 by the number of times PACIA and SIA changed the lists of chemicals and equipment.

The original cost of training is assumed to be a once-off cost and hence identical to that originally stated for Option 1, that is, \$147,290.

As for Option 2, all subsequent list changes would cost the industry \$73,645. This subsequent training cost is assumed to be incurred approximately every two years (four times before the regulation sunset date in 10 years times), each time the PACIA and SIA lists changed. The total of all subsequent costs for all list updates within Option 2 is assumed to be \$294,580.

6.4.2.3 Option 3: The non-regulatory approach

There are no costs associated with this Option for the chemical industry, the scientific equipment industry and the industry associations.

6.5 Community

6.5.1 Benefits to the community

6.5.1.1 Option 1: The proposed regulations

Mandating sales and storage procedures for prescribed categories of precursor chemicals and equipment under Option 1 is expected to help reduce the diversion of licit precursor chemicals and equipment into illicit drug production, thereby reducing the negative externalities and costs imposed on the community, businesses and Government associated with the production of ATS.

The proposed regulations may provide various benefits to the community, including:

- a decrease in health related expenditure to the broader community;
- a decrease in costs associated with drug production and consumption (crime related) to the broader community; and
- an increase in productivity due to decreased drug consumption and drug-related crime to general businesses and the broader community.

It is difficult to quantify the benefits to the community, but for the proposed regulations to achieve the Government's goals, whilst not creating unnecessary costs to businesses and the community, the costs of the regulations must be lower than the benefits calculated.

To support this assertion (benefits must exceed costs), a break-even analysis is performed in Table 6-3. The break-even analysis shows that the reduction in social harms required in order for the regulations to be cost-beneficial under Option 1 is 0.45 per cent. The threshold requirement, though likely to be underestimated given not all costs of ATS abuse will be minimised by the proposed regulations, is the best approximation available given the available information.

It is possible that the reduction in social harm is related to an increase in the compliance rate (due to the mandatory requirement). However, it is not possible to establish the nature and extent of the relationship between increased compliance as a result of the proposed regulations and the decrease in the level of social costs associated with ATS due to a lack of evidence. Hence, it is not clear what increase in compliance would be required for this break-even point to be met.

Table 6-3: Calculations for Option 1 demonstrating the threshold requirement for benefits to exceed cost

Calculations	
Social cost (extracted from Collins and Lapsley report, page 23)	\$9.25 billion nationally ⁷⁹
Apportion for Victoria (based on population)	\$9.25 billion x (5,427,000 ⁸⁰ / 22,145,141 ⁸¹) = \$2.27 billion
Apportion for ATS harm as a proportion of total harm attributable to drugs.	= \$2.27 billion x 14.1% ⁸² = \$319.5 million
Cost to business and government (as calculated above)	= \$1,101,100 + \$(15,000x 3) + \$147,290 + \$147,290 = \$1,440,680
Threshold requirement	= \$1,440,680 / \$319.5 million = 0.45%

6.5.1.2 Option 2: The co-regulatory approach

Mandating sales and storage procedures for prescribed categories of precursor chemicals and equipment under Option 2 is expected to help reduce the diversion of licit precursor chemicals and equipment into illicit drug production, thereby reducing the negative externalities and costs imposed on the community, businesses and Government associated with the production of ATS.

⁷⁹ This figure is an estimate subject to the assumptions imposed by the Collins and Lapsley report

⁸⁰ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>

⁸¹ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Web+Pages/Population+Clock?opendocument#from-banner=PC>

⁸² AFP Drug Harm Index, March 2004 – Attributable harm

The co-regulatory approach would offer benefits to the community similar to those of the proposed regulations, although it is likely that the benefits under Option 2 could be higher as the precursor list will be updated more often to reflect changes in the production technologies or methods in the illicit drug production market. As stated at Option 1 above, it is difficult to quantify the benefits to the community, but for Option 2 to achieve the Government's goals, whilst not creating unnecessary cost to businesses and the community, the costs of the regulations must be lower than the benefits calculated.

To support this assertion (benefits must exceed costs), a break-even analysis is performed in Table 6-4. The break-even analysis shows that the reduction in social harms required in order for the regulations to be cost-beneficial under Option 2 is 0.51 per cent. The threshold requirement, though likely to be underestimated given not all costs of ATS abuse will be minimised by the proposed regulations, is the best approximation available given the available information.

It is possible that the reduction in social harm is related to an increase in the compliance rate (due to the mandatory requirement). However, it is not possible to establish the nature and extent of the relationship between increased compliance as a result of the proposed regulations and the decrease in the level of social costs associated with ATS due to a lack of evidence. Hence, it is not clear what increase in compliance would be required for this break-even point to be met.

Table 6-4: Calculations for Option 2 demonstrating the threshold requirement for benefits to exceed cost

Calculations	
Social cost (extracted from Collins and Lapsley report, page 23)	\$9.25 billion nationally ⁸³
Apportion for Victoria (based on population)	\$9.25 billion x (5,427,000 ⁸⁴ / 22,145,141 ⁸⁵) = \$2.27 billion
Apportion for ATS harm as a proportion of total harm attributable to drugs.	= \$2.25 billion x 14.1% ⁸⁶ = \$319.5 million
Cost to business and government (as calculated above)	= \$1,101,100 + (\$15,000x5) + \$294,580 + \$147,290 = \$1,470,680
Threshold requirement	= \$1,617,970 / \$319.5 million = 0.51%

⁸³ This figure is an estimate subject to the assumptions imposed by the Collins and Lapsley report

⁸⁴ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>

⁸⁵ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Web+Pages/Population+Clock?opendocument#from-banner=PC>

⁸⁶ AFP Drug Harm Index, March 2004 – Attributable harm

6.5.1.3 Option 3: The non-regulatory approach

The non-regulatory approach would offer indirect benefits similar to those of the proposed regulations. The difference between the potential benefits to be realised with the non-regulatory approach, when compared to the proposed regulations, is that the mandatory element of Option 1 is likely to increase compliance and therefore increase any potential benefits to be derived from this approach. This mandatory element is not part of the voluntary compliance approach with Option 3; therefore, this incremental benefit would not apply and the benefits associated with any potential increased compliance cannot be quantified.

In order for Option 3 to achieve the Government's goals, whilst not creating unnecessary cost to businesses and the community, the costs of this approach must be lower than the benefits calculated. To support this assertion (benefits must exceed costs), a break-even analysis is performed in Table 6-5. The break-even analysis shows that the reduction in social harms required in order for the regulations to be cost-beneficial under Option 3 is 0.005 per cent. The threshold requirement, though likely to be underestimated given not all costs of ATS abuse will be minimised by this approach, is the best approximation available given the available information.

It is possible that the reduction in social harm is related to an increase in the compliance rate (due to the mandatory requirement). However, it is not possible to establish the nature and extent of the relationship between increased compliance as a result of the proposed regulations and the decrease in the level of social costs associated with ATS due to a lack of evidence. Hence, it is not clear what increase in compliance would be required for this break-even point to be met. Even though only a marginal decrease in the level of social harm is required, it is difficult to ascertain whether benefits will exceed costs (as minimal as these costs are) as this approach is voluntary and no penalties or disincentives apply to industry participants for non-compliance.

Table 6-5: Calculations for Option 3 demonstrating the threshold requirement for benefits to exceed cost

Calculations	
Social cost (extracted from Collins and Lapsley report, page 23)	\$9.25 billion nationally ⁸⁷
Apportion for Victoria (based on population)	\$9.25 billion x (5,427,000 ⁸⁸ / 22,145,141 ⁸⁹) = \$2.27 billion
Apportion for ATS harm as a proportion of total harm attributable to drugs.	= \$2.27 billion x 14.1% ⁹⁰ = \$319.5 million
Cost to business and government (as calculated above)	= \$15,000 ⁹¹

⁸⁷ This figure is an estimate subject to the assumptions imposed by the Collins and Lapsley report

⁸⁸ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>

⁸⁹ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Web+Pages/Population+Clock?opendocument#from-banner=PC>

⁹⁰ AFP Drug Harm Index, March 2004 – Attributable harm

Calculations	
Threshold requirement	= \$15,000 / \$319.5 million = 0.005%

6.5.2 Costs to the community

6.5.2.1 *Option 1: The proposed regulations*

The regulations require all customers (end users) to complete an EUD for each purchase of Category 1 chemicals or non-account holders for Category 2 chemicals and Category 3 apparatus. When customers purchase chemicals or equipment from a firm, the firm would require information from the customer (in order for the firm to keep proper sales records for taxation purposes), such as proof of identification and customer company details. It is expected that the proposed regulations would impose a minimal-to-no administrative cost on the end user as such information is likely to be provided currently.

6.5.2.2 *Option 2: The co-regulatory approach*

The cost imposed on end users for Option 2 is similar to Option 1.

6.5.2.3 *Option 3: The non-regulatory approach*

The cost imposed on end users for Option 3 is similar to Options 1 and 2 if the industry increases compliance with the voluntary Code.

6.6 Net present value analysis

A net present value analysis is performed for each of the option to quantify the net present value of the costs and benefits over the regulatory period of 10 years. As the benefits to businesses, the community and the government are not quantifiable for all options, the net present value analysis only includes the costs associated with implementing each option.

The net present value analysis applies a real discount rate of 3.5 per cent as recommended in the *Victorian Guide to Regulation*.⁹² The results indicate that over the period of 10 years:

- Option 1 would result a net present value cost of \$9.46 million;

⁹¹ We are assuming that businesses do not incur the additional administrative costs (\$1.101m) as compliance is entirely voluntary and it is not possible to estimate what percentage of businesses will comply and therefore incur these costs. This option does not include updates to any list; therefore no new training or education programs are required.

⁹² Victorian Competition and Efficiency Commission 2007, *Victorian Guide to Regulation*, p. c-9.

- Option 2 would result a net present value cost of \$9.60 million, with additional costs borne by both businesses and the government due to the increase number of updates to the list of precursor chemicals and equipment governed by the regulations; and
- Option 3 would result in the least net present value cost at \$0.014 million. This is because under Option 3, it is assumed that businesses do not incur the additional administrative costs associated with conducting identification checks as compliance to any sale, storage and record requirement is completely voluntary. It is also assumed under Option 3 that the government does not conduct a further information and education campaign after the initial campaign to promote compliance with the PACIA/SIA Code.

Table 6-6: Net present value analysis of costs for Option 1

Option 1	Types of cost (\$ m)	Year										Total NPV	
		1	2	3	4	5	6	7	8	9	10		
Business	Administrative	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$9.16
	Once-off and Update training	\$0.147	--	--	--	\$0.074	--	--	--	\$0.074	--	\$0.26	
Government	Campaign	\$0.015	--	--	--	\$0.015	--	--	--	\$0.015	--	\$0.04	
Total NPV		\$1.22	\$1.03	\$0.99	\$0.96	\$1.00	\$0.90	\$0.87	\$0.84	\$0.87	\$0.78	\$9.46	

Table 6-7: Net present value analysis of costs for Option 2

Option 2	Types of cost (\$ m)	Year										Total NPV	
		1	2	3	4	5	6	7	8	9	10		
Business	Administrative	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$1.10	\$9.16
	Once-off and Update training	\$0.147	--	\$0.074	--	\$0.074	--	\$0.074	--	\$0.074	--	\$0.38	
Government	Campaign	\$0.015	--	\$0.015	--	\$0.015	--	\$0.015	--	\$0.015	--	\$0.06	
Total NPV		\$1.22	\$1.03	\$1.07	\$0.96	\$1.00	\$0.90	\$0.94	\$0.84	\$0.87	\$0.78	\$9.60	

Table 6-8: Net present value analysis of costs for Option 3

Option 2	Types of cost (\$ m)	Year										Total NPV
		1	2	3	4	5	6	7	8	9	10	
Business	Administrative	--	--	--	--	--	--	--	--	--	--	--
	Update training	--	--	--	--	--	--	--	--	--	--	--
Government	Campaign	\$0.015	--	--	--	--	--	--	--	--	--	\$0.014
Total NPV		\$0.014	--	--	--	--	--	--	--	--	--	\$0.014

6.7 Evaluation of options

6.7.1 Evaluation framework

This RIS uses the ‘balanced scorecard approach’ to compare the costs and benefits of the proposed options to the base case and to assess the merits of each option. The *Victorian Guide to Regulation* recommends this approach “where it is not possible to quantify and assign monetary values to the impact of a proposed measure”⁹³ which is the case for having a framework which governs the sales and storage procedures for precursor chemicals and equipment. Thus, the balanced scorecard approach allows a comparison of the options by assigning a relative score to each.

6.7.1.1 Evaluation criteria

The evaluation criteria used to assess the options are based on the four objectives as outlined in Section 4. Each option has been evaluated on the degree to which it:

- reduces the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production;
- ensures that the Victorian approach will facilitate a movement towards a national framework;
- improves record-keeping procedures to assist law enforcement; and
- minimises the additional administrative burden imposed on businesses.

The objectives were selected based on the rationale for intervention discussed in Section 3 of the RIS. The option chosen must address the issues raised in Section 3.5.1, regarding the risks of non-intervention.

Firstly, the framework selected should reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production. The environment in which businesses in the chemical or scientific equipment industries currently operate does not adequately regulate the sale and storage of these chemicals and equipment. It allows illicit drug manufacturers the ability to access chemicals and equipment due to the minimal controls in place. In addition, the compliance levels for the current self-regulatory regime are not clear, and evidence has suggested that self-regulation is not ideal for industries with low levels of concentration. As the industries covered by the self-regulation model in the PACIA/SIA Code fit that description, it is clear that stronger deterrents are necessary to improve compliance and decrease the numbers of clandestine laboratories, which will ultimately reduce the supply of ATS drugs in the community. The selected framework must therefore deliver stronger deterrents to potential ATS manufacturers by reducing the accessibility of precursor chemicals and equipment to ATS manufacturers. The selected framework must also

⁹³ Department of Treasury and Finance 2007, *Victorian Guide to Regulation*, Second Edition, April 2007.

enable the prosecution of suppliers of precursor chemicals and equipment if they do not comply with the regulations which would provide a deterrent to suppliers on non-compliance and align suppliers' private incentives with the achievement of the social objective of minimising crimes (and costs) associated with ATS production and consumption.

Secondly, the selected framework should address social welfare objectives and aid in the policing of crimes in order to reduce the level of criminal activities related to illicit drug production, distribution and consumption. The framework should assist law enforcement in their investigations into ATS related criminal activities as well as in the prosecution of major offences. The requirement for sales transaction records to be kept for a certain number of years would provide an audit trail that could serve as evidence by law enforcement in cases that are brought to court in proving that the precursor chemicals and equipment obtained by the end user were not used for the purpose it was originally meant for.

Thirdly, Victoria currently has no sales and storage regime in force to regulate the distribution of precursor chemicals and equipment, while all other states (excluding Tasmania) have introduced legislation in this area. Victoria risks becoming a focal point for illicit chemical and equipment sales due to its lack of stringency. Clandestine laboratories may move operations to Victoria in order to take advantage of the lack of regulation. The selected framework should ensure Victoria's regulatory environment aligns with other jurisdictions in order to provide a level of certainty by means of a level playing field for businesses in the chemical industries across all jurisdictions, in the absence of a national approach. The measure selected should achieve the objective of moving Victoria toward a national framework as this would bring consistency to the precursor chemicals and equipment sale and storage requirements in all states and jurisdictions.

Lastly, as all states move toward a national approach, the selected option should also contribute toward minimising the administrative burden imposed on businesses. Consistent requirements across states would mean that businesses operating in different states could streamline their processes to adhere to the requirements. This would save time and money for businesses as they would not have to constantly train staff in the different regulations in each jurisdiction.

A five-point scale has been used to assess the options against each of the criteria. Note that the rating scale is defined relative to the base case, where a score of zero indicates the base case (do nothing approach), a positive score indicates a more desirable result relative to the base case and a negative score indicates a less desirable result relative to the base case. A higher positive score or a more negative score indicates increasing levels of desirability/non-desirability relative to the base case. The table below outlines the scoring scheme used.

Table 6-9: Scoring Scale of -5 to +5

Score	Impact of option on criteria
5	More desirable relative to the base case
3	Desirable relative to the base case
0	Neutral (base case)
-3	Undesirable relative to the base case

Score	Impact of option on criteria
-5	More undesirable relative to the base case

The base case always scores zero against each criterion because it is the basis on which to assess the other options. The scores awarded to the options are relative to the base case. To illustrate, if an option receives a score of three against the criteria on ‘minimising the diversion of precursor chemicals to the production of illicit drugs’, this indicates that the option has a ‘desirable impact minimising the diversion of precursor chemicals to the production of illicit drugs’ relative to the base case.

6.7.1.2 Weightings

In line with the Government’s objective of minimising the diversion of licit precursor chemicals and equipment to illicit drug production and ensuring that the Victorian approach facilitates a movement towards a national approach, the first two evaluation criteria are regarded as the most important. As a consequence, both have been assigned a weighting of 30 per cent. The remaining two criteria are considered secondary objectives that support the main objectives. Better record keeping aids law enforcement which would help reduce the negative externalities associated with the diversion of precursor chemicals and equipment in the production and consumption of ATS. Minimising the cost increase imposed on businesses will ensure that businesses are not unfairly burdened by the sale and storage requirements. Both have therefore been assigned an equal weighting of 20 per cent.

Table 6-10: Criteria weighting

Criteria	Weightings (%)
Reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production	30
Ensure that the Victorian approach will facilitate a movement towards a national framework	30
Improve record-keeping procedures to assist law enforcement	20
Minimise the additional administrative burden imposed on businesses	20

6.7.1.3 Overall score

The overall score of each option has been calculated by multiplying the score assigned to each criterion by its weighting and summing the result. The balanced scorecard in Section 6.7.3 provides an assessment of the overall net benefit or cost of the proposed options. The score assigned to each criterion for each option is based on an assessment of their relative benefits and costs which have been discussed earlier in this section.

6.7.2 Evaluation of each option

This section scores each option against the evaluation criteria and describes the basis on which the scores are assigned. This section draws on the analysis contained in Sections 6.3-6.5.

6.7.2.1 Reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production

The base case involves voluntary compliance with the PACIA/SIA Code and the amendments made in 2007 to the *Drugs, Poisons and Controlled Substances Act* (to prohibit the possession of pill presses and the possession of prescribed precursor chemicals over prescribed quantities without authorisation or other lawful excuse) and with the pseudoephedrine rescheduling initiative. Effectively, businesses are not required to comply with the PACIA/SIA Code, while all industry members and end-users are required to comply with the amendments made to the *Drugs, Poisons and Controlled Substances Act* (that is, to have a lawful excuse for their possession of prescribed chemicals and pill presses) and the pseudoephedrine rescheduling initiative. The Act is targeted at people who may be in possession of a pill press or precursor chemical for criminal purposes (that is, the pill press or chemical has already been diverted from legitimate use) while the pseudoephedrine rescheduling initiative restricts the availability of end-products containing pseudoephedrine at the retail level. Businesses involved in the sale of precursor chemicals and equipment are currently not required to monitor sale transactions. The base case does not minimise the diversion of licit precursor chemicals into illicit drug production.

The proposed regulations and the co-regulatory approach would make it an offence for a supplier to sell or supply, for example, a pill press without the necessary records and identity checks. Both approaches are targeted at ensuring the supply process is transparent and

legitimate, to prevent diversion occurring. Options 1 and 2 involve mandating requirements with regard to the sale and storage of precursor chemicals and equipment for businesses in the chemicals and scientific equipment industries. Both are likely to minimise the diversion of licit precursor chemicals to illicit drug production as the stricter requirements would act as a deterrent, both to businesses which may have inadequate sales and storage practices and to potential illicit drug manufacturers seeking to purchase raw materials in Victoria. However, given the flexibility available under Option 2 to update the precursor chemicals and equipment list to reflect any changes in illicit drug production methods, it is likely that Option 2 will result in higher benefits compared to Option 1. Subsequent updates to the list under Option 2 will result in incremental benefits for this criterion. The benefits for Option 2 will therefore not have a multiplier effect when compared to the benefits of Option 1. Therefore, the proposed regulation receives a score of three and the co-regulatory approach has been assigned a score of four.

Option 3, the non-regulatory approach, does not propose any regulatory or legislative consequences for businesses or individuals who do not comply with the PACIA/SIA Code. If the education campaign is effective in encouraging some businesses to comply with the voluntary Code, it would lead to some reduction in social costs. However, the increase in compliance level compared to the current compliance level is expected to be insignificant when compared to Options 1 or 2. As such, this option has been assigned a score of one.

6.7.2.2 *Ensure that the Victorian approach will facilitate a movement towards a national framework*

Victoria does not currently regulate the sales and storage of precursor chemicals and equipment. The base case is not consistent with jurisdictions across Australia, and therefore does not promote the national framework. Currently, Queensland, Western Australia, South Australia and NSW have legislated requirements for the sale and storage of precursor chemicals and equipment that are mostly consistent with the Code.

The proposed regulation (Option 1) will bring Victoria into line with other jurisdictions in terms of having a regulatory regime governing the sales and storage of precursor chemicals and equipment. This will facilitate the movement towards a national framework. This would provide all businesses in the chemical industries that operate across jurisdictions with a level playing field in which to compete. The sales and storage requirements under the proposed regulations are largely in line with the Code and are therefore largely consistent with the legislative regimes that exist in other Australian jurisdictions, in particular with NSW which makes up a large proportion of the Australian precursor chemicals and equipment market. The high degree of consistency in the legislative regime proposed under Option 1 with the NSW regime is particularly important as these are the two largest markets where precursor chemicals and equipment are manufactured and distributed and where most business participants operate. Therefore Option 1 has been assigned a score of four as it is the most desirable relative to the base case.

The co-regulatory approach will bring Victoria further into line with other state jurisdictions, but not to the same degree as Option 1. Other states have chosen to regulate their list of precursor chemicals and equipment themselves and not to co-regulate this responsibility with PACIA or SIA. As Option 2 will not make Victoria move toward a national framework by

bringing it into line with other state jurisdictions, the co-regulatory approach has been assigned a score of two as it is the more desirable than the base case, but not as desirable as Option 1.

Option 3, the non-regulatory approach, does not vary from the base case and does not promote a movement towards a national framework. As such, this option is identical to the base case and has been assigned a score of zero.

6.7.2.3 *Improve record-keeping procedures to assist law enforcement*

The proposed regulations and the co-regulatory approach both require suppliers to keep proper records of sales for chemicals and equipment for between 2-5 years. The proposed regulations and the co-regulatory approach require that sales of precursor chemicals and equipment be restricted to account holders, customers who provide EUDs and customers who provide proof of identification. This improved record keeping would provide an audit trail that could assist law enforcement in their investigations into illicit drug production. The information in sales records would aid in the investigation of organised criminal networks and in the prosecution of major criminal offences by providing evidence that the purchase of precursor chemicals and equipment were neither for legitimate reasons nor for the production of normal goods. Victoria Police have indicated that the mandatory sale and storage requirements could result in higher levels of compliance, and the ability to inspect records would potentially help them both in the gathering of intelligence and the investigation of offences. Making sales recording and storage mandatory would likely increase compliance levels as it would now be mandatory for suppliers to comply with the regulations to avoid being charged, prosecuted and fined for breaching the law. Another incentive for compliance is to protect a supplier's legitimate business from exploitation by criminal elements. Both Options 1 and 2 are assigned scores of five as any type of regulation is more desirable when compared to the base case where no regulation currently exists.

Option 3, the non-regulatory approach, does not propose any regulatory or legislative consequences for businesses or individuals who do not comply with the PACIA guidelines. As such, it is only when businesses choose to comply with the voluntary Code that record keeping procedures will occur, hence this option has been assigned a score of two.

6.7.2.4 *Minimise the additional administrative burden imposed on businesses*

Businesses are likely to incur additional administrative costs, but these costs would be minimised by the consistent regulatory regimes. These costs would mainly relate to training and keeping track of the regulatory requirements in order to be compliant. Option 1 has therefore been awarded negative three points for the additional administrative costs imposed on businesses, when compared to the base case. Option 2 has been assigned a score of negative four points as its costs are assumed to be higher than Option 1 due to the frequency of the expected changes in the PACIA list and the consequential costs in training for businesses working with the altered lists. However, it should be noted that if the current level of compliance with the PACIA/SIA Code of Practice is higher than assumed, then the cost of Option 2 may be lower, and this could impact on the ranking of the options.

Option 3 has been assigned a score of negative one as it marginally increases the costs for Government when compared to the base case. The costs for Option 3 are lower than that for Options 1 and 2 as no ongoing training for list updates is included in this option, only the costs relating to the information campaign are included.

6.7.3 Balanced scorecard assessment

The balanced scorecard below aggregates the scores assigned to each option against the evaluation criteria to arrive at an overall assessment for each option. The proposed regulation (Option 1) in Victoria scores the highest against the criteria and would be expected to deliver the highest overall benefits if implemented.

Table 6-11: The balanced scorecard for the proposed options

Criteria	Weighting (%)	Base case		Option 1		Option 2		Option 3	
		Assigned score	Weighted score	Assigned score	Weighted score	Assigned score	Weighted score	Assigned score	Weighted score
Reduce the social costs associated with ATS by minimising the diversion of chemicals and scientific equipment to illicit drug production	30	0	0.0	3	0.9	4	1.2	1	0.3
Ensure that the Victorian approach will facilitate a movement towards a national framework	30	0	0.0	4	1.2	2	0.6	0	0
Improve record-keeping procedures to assist law enforcement	20	0	0.0	5	1.0	5	1.0	2	0.4
Minimise the additional administrative burden imposed on businesses	20	0	0.0	-3	-0.6	-4	-0.8	-1	-0.2
Total	100	0	0.0	11	2.5	8	2.0	2	0.5

7 The preferred option

Using the qualitative analysis conducted and selected quantitative data available, the preferred option for the Victorian Government in mandating sales and storage procedures for the chemical and scientific equipment manufacturing and wholesaling industries, is Option 1.

This option delivers all the benefits to the Government, businesses and the community using the least cost approach.

The balanced scorecard analysis shows that Option 1 is favoured despite Option 2 being more effective in reducing the diversion of licit precursor chemicals, on the basis that it is expected to impose lower administration costs on the chemicals industry than Option 2 and is more consistent with the regulatory regimes in Australia, especially New South Wales which is the nearest and largest jurisdiction for the precursor chemicals and equipment industry and will better facilitate a movement towards a national approach. However, it should be noted that if the current level of compliance with the PACIA/SIA Code of Practice is higher than assumed, then the cost of Option 2 may be lower, and this could impact on the ranking of the options.

As part of the consultation process, the survey results indicated 40 per cent of respondents claimed that the financial cost to keep the transaction records and storage procedures were low. It is difficult, however, to draw conclusions from this response as the survey results were based on 16 responses out of a sample of over 600 questionnaires that were sent.

Further details on administrative and compliance costs are provided in Section 6.

8 Small Business Impacts

While it is a non-mandatory requirement in a RIS document to include the assessment of small business impacts as a result of the proposed regulations, this section has been included as part of good practice.

Victorian small business is not expected to be adversely impacted by the proposed legislation.

The industry structure for both the manufacture and wholesale chemical industries is highly fragmented. Over 60 per cent of sales activities in the manufacturing industry is conducted by small business, with the four top manufacturers making up 40 per cent of the market share. Similarly, the wholesale industry is made up of one major player (Orica Limited) holding 20 per cent market share with small players making up the bulk of the industry.

The small business impact assessment is based on certain limitations in the data and information available, including:

- no information is available regarding small business compliance with the current voluntary Code;
- no information is available on the cost significance of the proposed regulations and whether the costs imposed on small businesses is higher than for large businesses; and
- no information is available regarding the proportion of small businesses affected by illicit drug abuse, and hence it is unclear to what extent the positive indirect impacts presented below will be experienced by small businesses.

8.1 Direct impacts

8.1.1 Impacts on small business involved in supply and distribution of precursor chemicals and equipment

Complying with the new regulatory regime is expected to cause a minimal rise in operating costs for small businesses supplying and distributing precursor chemicals and equipment. The costs imposed by the proposed regulations would be largely administrative costs⁹⁴. In addition, administrative costs make up a relatively small proportion of overall costs in both the manufacture and wholesale chemical industries. Statistics suggest that administrative costs account for four per cent of operating expense in the chemical manufacturing industry and 11.5 per cent in the chemical wholesaling industry.⁹⁵ In addition, 40 per cent of industry respondents to the Department of Justice's survey claimed that the financial cost to keep the transaction records and storage procedures are low. It has also been noted that administrative costs related to the storage of sales records would be incurred as part of the requirements for

⁹⁴ These costs include the completion of the EUD which is expected to be in a standard format and would impose minimal time and effort to complete.

⁹⁵ This is assuming that administrative costs are classified as 'other' costs in the operating expense.

1. IBISWorld 2009, Adhesive, Cleaning and Other Chemical Product Manufacturing in Australia: C2549
2. IBISWorld 2009, Chemical Wholesaling in Australia: F4523

small businesses to keep relevant sales documentation for tax purposes. Using estimates of industry revenue and the number of wholesalers and manufacturers in Australia, it is estimated that the average turnover of a business in manufacturing is \$12.37 million⁹⁶ and in wholesaling is \$3.17 million⁹⁷. The administrative costs imposed on an average business was estimated as \$1,540 as shown in Table 6-2. Hence, the administrative costs imposed on an average business as a percentage of revenue is estimated to be 0.012 per cent for manufacturers and 0.049 per cent for wholesalers. Further specific data is not available on small business turnover.

The bulk of operating costs relate to the costs of raw materials/goods. Since the administrative costs related to the implementation of the proposed legislation is minimal, it is unlikely that the implementation of the proposed legislation will disproportionately increase the administrative costs of small businesses.

8.1.2 Potential physical investment requirement on small business

Small businesses may need to provide or improve secure access procedures in their storage facilities to comply with the proposed legislation. It is reasonable to assume that most businesses would have put in place secure storage facilities due to the dangerous nature of these chemicals. The requirement to provide secure storage in the proposed legislation is unlikely to add additional costs.

Dangerous goods are substances and articles classified on the basis of their immediate physical or chemical effects such as fire, explosion, corrosion, oxidation, spontaneous combustion or poisoning that can harm property, the environment and people. In Victoria, all dangerous goods are classified into one of nine major classes or eight sub-classes, according to their common dangers. These classes include explosives, flammable gases, flammable liquids, oxidizing agents, toxic substances and corrosive materials. Some dangerous goods are dangerous for more than one reason and therefore will be given subsidiary classifications to identify their other dangerous properties.

In Victoria, the manufacture, storage, sale, transport, use and import of dangerous goods are governed by several Dangerous Goods Regulations and Codes, depending on their class and usage. Relevant codes are the Australian Dangerous Goods Code and the Code of Practice Dangerous Goods Storage and Handling. There are three sets of Victorian Regulations covering storage and handling of dangerous goods, explosives and “high consequence dangerous goods” (HCDG).

It is not possible to specify which precursor chemicals would be subject to dangerous goods procedures, as this would require a review of the individual properties of over 100 chemicals to determine their precise classifications and the procedures applying to them. Nevertheless, it seems reasonable to assume that at least some precursor chemicals would be subject to Dangerous Goods laws and codes and that, regardless, chemical manufacturers and distributors would be likely to implement safety and security procedures when handling and storing

⁹⁶ This is based on the industry revenue of \$1.67 billion divided by 135 businesses. Statistics obtained from IBISWorld 2009, Adhesive, Cleaning and Other Chemical Product Manufacturing in Australia: C2549.

⁹⁷ This is based on the industry revenue of \$5.93 billion divided by 1870 businesses. Statistics obtained from IBISWorld 2009, Chemical Wholesaling in Australia: F4523

chemicals in their raw state, both for the safety of their employees and clients and for the protection of their investment in valuable stock.

It is recognised, however, that if small businesses do not currently provide secure storage facilities for storing chemicals, the proposed regulations will impose a once-off additional cost to such businesses. The Department of Justice survey where the majority of respondents were small businesses (66.7 per cent have fewer than 50 employees) in the business of manufacturing, distributing and supplying chemicals or equipment, indicated that 46.7 per cent had designated storage security arrangements in place (note that 26.6 per cent of respondents did not return an answer).

It is anticipated that most manufacturers and wholesalers will have storage facilities available at their operational sites as they are storing valuable chemicals and equipment with inherent safety requirements. For example, the *Occupational Health and Safety Act 2000* and *Dangerous Goods Act 1985* would require the safe storage of such chemicals and equipment. Therefore, while the proposed regulations mandate storage capabilities for these chemicals and equipment, it is expected to have minimal impact on most industry participants as such measures would have been put in place in light of other legislative requirements.

The proposed regulations require access restrictions to be placed on Category 1 precursor chemicals. Only suppliers or people issued with written authorisations by suppliers would be allowed to access to such chemicals. This requirement would impose a small and insignificant administrative cost on small businesses.

As previously indicated, the Department of Justice issued a survey to industry members seeking information regarding current storage requirements and their potential incremental costs to comply with storage requirements of the proposed legislation. The response rate was too small to allow storage costs to be quantified. However, 40 per cent of industry respondents to the survey stated that the financial costs to keep the transaction records and storage procedures were low. Of the remaining respondents, 26.7 per cent stated that cost impacts would be medium, 20 per cent stated cost impacts would be high and 40 per cent did not respond. No trend can be established as to the size of the respondents' businesses and their respective answers to this question. Answers varied equally between small and large businesses. It is difficult, however, to draw conclusions as the survey results were based on 16 responses out of a sample of over 600 questionnaires that were sent.

8.2 Positive indirect impacts

It is worth noting that the proposed regulations could deliver some benefits for small business and the whole community in Victoria. As noted in Section 2.4, 49 per cent of tangible social costs are imposed on businesses as a result of illicit drug abuse. The implementation of the proposed regulatory regime is expected to indirectly reduce the crime rate and subsequently improve the safety of the overall business environment that will benefit small businesses.

9 Competition Impact Assessment

9.1 The competition test

In accordance with the fundamental principles set out in the *Victorian Guide to Regulation*, the proposed regulations will not impose any restriction or barrier to competition. The new regulatory regime will have minimal impact on businesses' operating costs and therefore will not create barriers to entry nor drive existing businesses out of the market. It is unlikely to reduce industry competitiveness. This is supported by the Department of Justice survey results which show that 40 per cent of respondents stated that the financial cost to keep the transaction records and storage procedures were low. Of the remaining respondents, 26.7 per cent stated that cost impacts would be medium, 20 per cent stated cost impacts would be high and 40 per cent did not respond. No trend can be established as to the size of the respondents' businesses and their respective answers to this question. Answers varied equally between small and large businesses.

However, it is noted that businesses entering the precursor chemicals manufacturing and wholesaling industry will have to ensure that a secure storage facility is installed. This will impose additional capital requirements. However, it is also likely that businesses entering this industry will have to comply with other regulations such as the *Occupational Health and Safety Act 2000* and *Dangerous Goods Act 1985* which require businesses to have secure storage facilities for dangerous chemicals. Furthermore, it makes good business sense to install a storage facility to keep and protect valuable goods (chemicals). The storage facility requirement is unlikely to impose additional capital cost that is significant enough to act as a barrier to entry.

9.1.1 Promoting competition

The proposed regulations would require standard and consistent sales and storage practices to be implemented across the manufacturing and wholesaling chemical and scientific equipment industries. Consistency with other legislative regimes would also ensure that businesses that operate across multiple jurisdictions do not incur additional costs of training employees in different legislative requirements across jurisdictions.

The proposed regulations would therefore create a level playing field for all business entities in the chemical and scientific equipment industries and promote competition, as all businesses would have to incur the cost of compliance. Non-compliant businesses would be committing an offence and would be subject to penalties under the proposed regulatory framework. In addition, as highlighted in Section 8.1.1, as cost of compliance makes up an insignificant percentage of business revenue, the creation of a level playing field does not adversely impact on small businesses.

10 Implementation and Enforcement

The Department of Justice will develop initiatives for an industry education and awareness campaign prior to the introduction of the regime, in consultation with Victoria Police. It is expected that, once the end-user scheme is in operation, day-to-day queries from industry members would be handled by the Chemical Diversion Desk at Victoria Police. There will be no ongoing administration role for the Department of Justice.

There is no proposal to create an inspectorate, regulatory body or central registry to oversee the scheme.

It is expected that the chemicals and apparatus to be prescribed in the proposed regulations will need to be updated periodically by the Department of Justice to reflect any changes recommended at the Commonwealth level following a national risk-based assessment of precursor chemicals. As discussed in section 5.3 of this RIS, the Australian Government is considering options for the introduction of a national risk-based assessment process. It is understood that, once an assessment mechanism is decided upon by the Australian Government, such an assessment would likely be carried out at regular intervals to facilitate a national approach to precursor control as part of the proposed national precursor framework.

10.1 Responsible parties

Part V of the *Drugs, Poisons and Controlled Substances Act 1981* relates to criminal offences in respect of the possession, trafficking, cultivation and use of drugs of dependence. Part V of the Act is the responsibility of the Minister for Mental Health. By arrangement with the Minister:

- the Minister for Police and Emergency Services oversees the preparation of legislative proposals affecting the criminal offence provisions of Part V of the Act, in consultation with the Minister for Mental Health; and
- the Department of Justice undertakes the work associated with such proposals, in consultation with the Department of Health.

10.2 Actions that regulated parties will undertake to comply

Suppliers would be the only regulated parties. They would be required to:

- restrict sales of Category 1 chemicals to account customers who provided proof of identity and an End User Declaration (EUD);
- delay supply to purchasers of Category 1 chemicals for 24 hours;
- request purchasers of Category 1 goods and non-account purchasers of Categories 2 and 3 goods to provide proof of identification and to complete and provide EUDs;
- keep EUDs for five years (Category 1 goods) and two years (Categories 2 and 3 goods);

- maintain sales records and keep them for five years (Category 1 goods) and two years (Categories 2 and 3 goods);
- prevent access to stored Category 1 chemicals by anyone but the supplier or a person authorised by the supplier in writing;
- keep written access authorisations for two years; and
- allow police to inspect EUDS, sales records and access authorisations during business hours.

10.3 Enforcement

The offence provisions in the regime would be enforced by Victoria Police. Victoria Police would have the power to charge a supplier with an offence under the legislation and would have the power to inspect EUDs, sales records and access authorisations held by suppliers.

It is not possible to specify the cost implications for Victoria Police of enforcing the regime as this would depend entirely on operational policing decisions made by Victoria Police once the legislation has commenced. The allocation and deployment of police resources is a matter for the Chief Commissioner of Police.

10.4 Expected level of compliance

It is considered that deterrence will play a key role in the effectiveness of the proposed regulatory regime. It is anticipated that legitimate firms would want to meet their legal obligations and avoid being charged or incurring fines, and thus have a stronger incentive to comply than would be the case under the voluntary Code, where no such incentives for compliance apply.

It is difficult to determine the expected level of compliance. Among PACIA and SIA members, the level of compliance might be expected to be good as they would already be familiar with the PACIA/SIA Code. According to the survey conducted by the Department of Justice, results indicated that 60 per cent of respondents were aware of the voluntary Code but did not restrict the supply of the precursor to account customers only. While it could be inferred that there is potentially a 40 per cent compliance rate, it is difficult to assume that this is a fair representation of what does happen in the precursor chemical and equipment industries as the survey results are based on 15 responses out of a sample of over 600 questionnaires that were sent.

Given that non-compliance is an offence under the regulatory regime, the penalties imposed could act as a deterrent, and hence it is reasonable to assume that, under the proposed legislation, the compliance rate is likely to increase. It is, however, not possible to estimate the expected increase.

10.5 Compliance strategy

Compliance would be measured by exception, that is, by the number of instances of non-compliance detected by Victoria Police. The Department of Justice would seek regular updates from Victoria Police on rates of non-compliance. No central compliance monitoring program or inspectorate would be established.

Random audits could be considered by Victoria Police arising from intelligence gathered through related investigations into organised crime operations and their associates. However, this is an operational matter that would be determined solely by Victoria Police based on operational need.

It is proposed to promote compliance through an education and awareness campaign on introduction of the regulations. The proposed campaign should assist compliance, particularly as the campaign would highlight the benefits of compliance for industry members in terms of protecting their businesses from exploitation by the illicit drugs market. It is expected that the Victoria Police Chemical Diversion Desk would incorporate advice about the new regime in their day-to-day dealings with industry members, to encourage compliance.

At this stage, it is proposed the information campaign would comprise three key elements:

- a mail out to industry and peak bodies undertaken by the Department of Justice;
- advertisements in industry publications arranged by the Department of Justice;
- ongoing advice to industry provided by Victoria Police via its Chemical Diversion Desk.

Based on the cost in 2008 of advertisements and mail out of the Department of Justice Discussion Paper, it is estimated that the Department of Justice components of the information campaign would likely cost approximately \$7,000 for printing, copying and the mail out, and approximately \$8,000 for advertisements, making an estimated total cost of \$15,000.

No cost can be ascribed to the activities of Victoria Police as the allocation of resources is a matter for Victoria Police and is decided by the Chief Commission of Police according to operational need.

10.6 Penalties for non-compliance

It would be an offence for suppliers to fail to comply with the requirements detailed in the section above outlining actions for regulated parties. The maximum penalty levels contained in the amendments to the *Drugs, Poisons and Controlled Substances Act 1981* made in 2009 are in the range of \$11,682-\$17,523 for companies and \$2,336-\$3,504 for individuals, depending on

the offence.⁹⁸ These penalties have been selected to be broadly consistent with the range of penalties imposed in NSW and are considered sufficient to act as a deterrent.

It was decided the penalties should be broadly consistent with penalty levels in NSW because the levels appear to be reasonable for the types of summary offences involved, which relate in most instances to administrative procedures such as record keeping, and also it is likely that, ultimately, there will be a national approach to precursor control. Maximum fines in the ranges outlined above are considered to strike the right balance between promoting compliance and keeping the burden on industry to reasonable limits.

⁹⁸ Note that penalties for offences under the Victorian legislation are different for similar offences in the other jurisdiction. Penalties in Victoria must be consistent with the *Sentencing Act 1991 (Vic)* and with preferred sentencing practice in Victoria, just as other jurisdictions must comply with their own sentencing regimes and practice. Even under a national scheme, penalties would not be uniform across all jurisdictions.

11 Evaluation strategy

While an evaluation strategy is not a mandatory requirement in the RIS process, it is included as good practice.

The Department of Justice expects that the first opportunity for an evaluation of the system will occur when the proposed national precursor control framework is finalised, at which time the Department of Justice will review the system to determine whether changes are required to fit with the national approach.

Subsequent evaluations or reviews may be required as a result of developments with the national framework and its response to changes in the illicit drugs market. It is expected that any such reviews would be initiated and led by the Australian Government in consultation with the national Precursor Working Group, and that Victoria would work closely with other jurisdictions to ensure harmonisation between regimes.

An evaluation opportunity will also arise when the supporting regulations for the Victorian scheme sunsets in 10 years. This will provide a formal opportunity to review the number, categorisation and risk profiles of the regulated chemicals and equipment, and to consult with industry and other stakeholders on these issues through a regulatory impact statement.

As indicated in section 2, production technology and chemicals used can change as a result of preventative measures, which is why the regulations need to be flexible to accommodate such changes. The regime would be assessed informally by the Department of Justice through its monitoring of national developments in precursor controls and patterns of drug production, trafficking and consumption, and by Victoria Police through its enforcement of the regime. If any issue arose with the operation or scope of the scheme prior to the sunset of the regulations, the Department of Justice would undertake appropriate consultation and analysis, including with the Australian Government, to determine if legislative or procedural changes were needed.

As indicated in section 2.3, at the current time no forensic data is systematically collected and analysed (in Victoria or elsewhere) that enables the source of diverted precursors to be readily determined. In the absence of such data, the Department of Justice would therefore rely on enforcement data, case studies and de-classified intelligence from Victoria Police, supplemented by consultations with other jurisdictions and with the national Precursor Working Group. The Department of Justice would also review published national and state data in respect of clandestine laboratory detections, drug arrests and drug use.

12 Change in the administrative burden

The Department of Justice has decided that a Standard Cost Model (SCM), now Regulatory Change Measurement (RCM), should be carried out within 6-12 months after the introduction of the regulations and completion of the education campaign. This timeline takes account of the state election in November 2010, while still allowing for timely measurement of change in the administrative burden. It is proposed to carry out an RCM in accordance with this timeline.

13 Consultation undertaken

The proposed period for public submissions to this RIS is 28 days, to align with the commencement date of 31 May 2010, when regulations have to be established in order for the amendments to be implemented.

The Department consulted with businesses and the community by releasing, on 26 July 2008, the Discussion Paper “A New Sales and Storage Regime for Precursor Chemicals and Equipment in Victoria – Proposed amendments to the Drugs, Poisons and Controlled Substances Act 1981” which was sent to 660 organisations, including chemical manufacturers and distributors, scientific and research organisations, pharmaceutical companies and 10 industry peak bodies.

The discussion paper was also advertised in The Age and the Herald-Sun on 28 June 2008 and in the Weekly Times on 2 July 2008.

The discussion paper included a survey for industry members to complete about current end-user reporting practices.

Comments and completed surveys were due back to the Department of Justice on 25 July 2008, although comments continued to be accepted for several weeks after that date.

13.1 List of submissions/comments

13.1.1 Summary of feedback from stakeholders

Thirteen substantive written comments were received from stakeholders. Comments from main stakeholders include:

- PACIA was very supportive of legislative efforts to prevent diversion of precursor chemicals to illicit drug production, but expressed the view that Victoria should not legislate now, but, in the interests of national consistency, wait until a national framework had been decided, to address the complexity and inconsistency of legislation at the jurisdictional level.
- ACCORD, the peak body for the cosmetic and hygiene industries, supported the views put forward by PACIA.
- Medicines Australia, the peak body for the pharmaceuticals industry, referred an enquiry from a member about the scope of the scheme’s therapeutic goods exemption, but otherwise made no comment.

The remaining comments expressed a range of views. Of these:

- seven stakeholders indicated support for a regulated end-user reporting system;
- two stakeholders expressed an explicit preference for the recommended scheme;

- four stakeholders suggested modifications to the proposed scheme which potentially would result in an increased level of regulation under the scheme; and
- two stakeholders expressed concerns about the lack of legislative consistency among jurisdictions and the associated burden for industry.

13.1.2 Submissions and comments

Submissions and comments were received from:

- PACIA - peak body for the plastics and chemicals industries;
- Medicines Australia - peak body for the pharmaceuticals industry;
- ACCORD - peak body of the cosmetic and hygiene industries;
- Department of Primary Industries;
- Peter Mac Hospital;
- Merck;
- Felton Grimwade & Bosisto's Pty Ltd;
- Kendon;
- Ego Pharmaceuticals Pty Ltd;
- Tri-Tech Chemical;
- Robotron Group;
- Plastral; and
- Industry member (unknown).

13.2 Surveys

Fifteen surveys were received. The relatively low level of response to the survey made it difficult to gain a substantial picture of current industry practice and views regarding end-user control.

13.3 List of private meetings

The Department of Justice presented on the proposal to a PACIA regulatory affairs meeting (comprising PACIA and PACIA members) on 17 July 2008.

A Copy of Proposed Regulations

A copy of the proposed Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010 is attached.