

THE IMPACT OF THE LAW
AND SOCIAL POLICY ON THE COMMUNITY:

Control of Weapons Act: Out of Control?

A Joint Discussion Paper of La Trobe Law Students
and the West Heidelberg Community Legal Service

This Report was written by La Trobe Law Students, Nicole Resstel-Pires, Dianne Duncan, Karen Bell with assistance from Antoinette Salman as part of their clinical placement at the West Heidelberg Community Legal Service. It was edited and supervised by Liz Curran, Lecturer in Law and Student Clinical Legal Education Supervising Solicitor. This component of the course was introduced in July 2002 to encourage teamwork and to enhance opportunities for students to engage in the law making process and public policy. Students determine their topics in consultation with the legal service and their lecturer after determining matters of concern arising from their case-work whilst on placement at the legal service or arising from associated problems they identify as relevant to members of the West Heidelberg community and the community more broadly.

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Chapter 1

The *Control of Weapons Act*: Reaching its True Potential?

By Nicole Resstel-Pires

1.0. Introduction

The *Control of Weapons Act*¹ (the Act), and its subsequent amendments, were introduced to protect the Victorian public from weapon-related crime by effectively reducing the number of knives and other (non-firearm) weapons in public possession. Whether these laws have achieved the purposes for which they were enacted has been called into question by several authorities both within and outside the criminal justice system². This first Chapter will examine the particular aims and purposes for which the legislation was enacted and whether they have in fact been achieved. Chapter Two will look at the definitions and categories of weapons as described in the legislation and the impact of the “lawful excuse provisions”, especially in relation to everyday items frequently carried by members of the public. The third Chapter will investigate the effect of *Section 10* of the Act (which permits police to perform searches without a warrant) on society as a whole as well as its effect on particular groups within the community. The final Chapter will examine community awareness of the laws on weapons and explore the ways in which public knowledge could be enhanced.

In order to investigate the aforementioned issues, the researchers have utilised a number of resources;

- Case law
- Professional literature and commentary
- Interviews with experts in the field who have in-depth knowledge on the subject matter and come into contact with the practical effects of the Act on a daily basis
- Parliamentary debates (Hansard)
- Official Government reports and statistics
- The media and media reports

Experts who were interviewed for this project are not identified as La Trobe University’s ethics approval was granted on the basis that all interviews would remain confidential.

The paper makes recommendations on how some of the identified issues may be improved to make these laws as effective and fair as possible. These recommendations will be contained at the end of each Chapter with a comprehensive list replicated in Appendix A.

¹ 1990 (Vic)

² Anonymous Experts 1, 2 & 3.

1.1. The *Control of Weapons Act* and Subsequent Amendments

This section will provide an overview of the Control of Weapons legislation, and briefly examine the reasons underlying their introduction. Such an examination is necessary in order to determine whether the goals intended to be reached by their enactment have in fact been met.

1.1.1 The Control of Weapons Act 1990 (Vic)

The Act came into effect in 1990 with the stated purpose of regulating “weapons other than firearms and body armor.”³ It was intended to regulate the ownership of offensive weapons, as well as restrict their possession and use in public areas where they pose a serious threat of injury or death. The Act divided ‘weapons’ into 3 separate classes: ‘Prescribed Weapons’, ‘Regulated Weapons’ and ‘Dangerous Articles’. Each category of weapon carried with it different restrictions. ‘Prescribed Weapons’ required an exemption from the Governor in Council to own and possess. ‘Prescribed Weapons’ offences also resulted in the larger penalties than offences involving weapons from the other two categories. ‘Regulated Weapons’ and ‘Dangerous Articles’, on the other hand, were allowed to be used and/or carried if the individual could demonstrate that they had a “lawful excuse” for doing so, with the list of acceptable excuses being longer for the latter category. For example, the legislature did not consider it legitimate for persons to carry ‘Regulated’ weapons for self-defence⁴ as history showed that more often than not, these items ended up being used against the victim by the attacker. However, a ‘Dangerous Article’ was allowed to be carried for this purpose⁵.

Since the Act was introduced in 1990, there have been 2 subsequent amendments to the accompanying regulations. These new Regulations and Amendment Regulations, introduced in 2000 and 2004 respectively, were aimed at enhancing the effectiveness of the legislation and further protecting the community.

1.1.2 Control of Weapons Regulations 2000 (Vic)

New regulations were introduced by the Victorian Parliament in 2000 and came into force on 17th December of that year. The Department of Justice prepared a regulatory impact statement stating that the new laws were aimed at “reduc[ing] risks posed to public safety by prohibiting certain non-firearm weapons and reducing their general availability.”⁶ The names of the weapon categories were also changed by the new regulations, with ‘Prescribed Weapons’ becoming ‘Prohibited Weapons’ and ‘Regulated Weapons’ becoming ‘Controlled Weapons’.

³ *Control of Weapons Act* 1990 (Vic) s 1.

⁴ *Ibid* s 6(3), Version No. 11, 1997.

⁵ *Ibid* s 7(3), Version No. 11.

⁶ Department of Justice Victoria, *Regulatory Impact Statement: Control of Weapons Regulations 2000*, September 2000

The Victorian government asserted that knives were becoming a major threat on the streets of Victoria and as such, statutory changes were needed to protect innocent victims. As noted by Mr. Haemeyer in 1994:

“The statistics for offences involving weapons show that knives account for almost double any other category of weapon, and that shows dramatically that knives are a major problem”⁷

It was thought that the high rate of weapon crimes in Victoria was inherently linked to a lack of control over the sale, ownership and possession of such implements.⁸ The general availability of knives and other offensive weapons at local stores and the ease with which anyone could acquire these items was a concern for Parliament, which believed it was important for such purchases to be recorded and that limits be placed on who was able to purchase certain weapons (e.g. flick knives, daggers, etc).⁹ Consequently, the new regulations were introduced to change the class of certain weapons (including numerous kinds of knives), upgrading them from ‘Controlled’ to ‘Prohibited’.¹⁰ As a result, those persons who wanted to purchase such items as collectables or weapons for sport would now need to obtain an exemption and register the items in their possession. Further, the regulations introduced new requirements for point of sale transactions. Vendors of prohibited weapons were not only required to obtain an exemption to sell those items, but they were also required to obtain specified identification from the prospective buyer and maintain detailed records of every sale.¹¹

1.1.3 Control of Weapons (Amendment) Regulations 2004 (Vic)

Further amendments to the classes of weapons were made in 2004. Bladed instruments (and swords in particular) remained a focus of concern, with reports showing that a greater proportion of murders were being committed with a blade than with any other weapon.¹² In Victoria in 2002, the media reported that the number of incidents involving weapons was on the rise, with a 33% increase in attacks, especially amongst young people.¹³ Arguably, in reaction to a spate of highly publicised sword attacks outside Melbourne nightclubs¹⁴ the Victorian government decided to upgrade the status of swords and crossbows from ‘Controlled’ to ‘Prohibited’. It was hoped that this would decrease the possession and use of these items in public, especially by young people.¹⁵

⁷ Mr Andre Haemeyer, Victoria, Legislative assembly, *Parliamentary Debates (Hansard)*, Second Reading, 5 May 1994 at 1566.

⁸ Ibid.

⁹ Mr Wynne, Victoria, Legislative Assembly, *Parliamentary Debates (Hansard)*, Second Reading, 30 May 2000 at 1956

¹⁰ Ibid.

¹¹ Department of Justice, above n 6 at 17.

¹² Australian Bureau of Statistics, *Yearbook 2002: Crime and Justice*, 11 October 2004 <<http://www.abs.gov.au/Ausstats/ABS@.nsf/0/175a81318b7be317ca2568a900154988?OpenDocument>> (12 September 2005).

¹³ Dubecki L, ‘Less crime, but weapon use on rise’ *The Age*, 7 August 1992.

¹⁴ Hodgson S, Smith C & Buttler M, ‘Club Faces Closure’ *Herald-Sun*, 11 November 2003 at 9.

¹⁵ Expert 2.

Whether or not the Act and its subsequent amendments have had the intended effect of reducing weapon (especially knife and sword) attacks in Victoria has been subject to some debate. It has been argued that the recent elevation of certain knives and swords to 'Prohibited' status has simply been a knee-jerk reaction to a few highly publicised incidents without a proper inquiry into more effective methods of reducing weapon crime in Victoria.¹⁶ Instead of prohibiting weapons which, as will be seen below, has been of limited beneficial effect, the government should perhaps look at other mechanisms for reducing the risk these items pose to the public. Experts in the field interviewed for this project noted that the laws, as currently formulated, have some fundamental flaws which need to be modified before they can truly be deemed 'effective'.¹⁷

1.2 Weapon Crime in Victoria: the Before and After

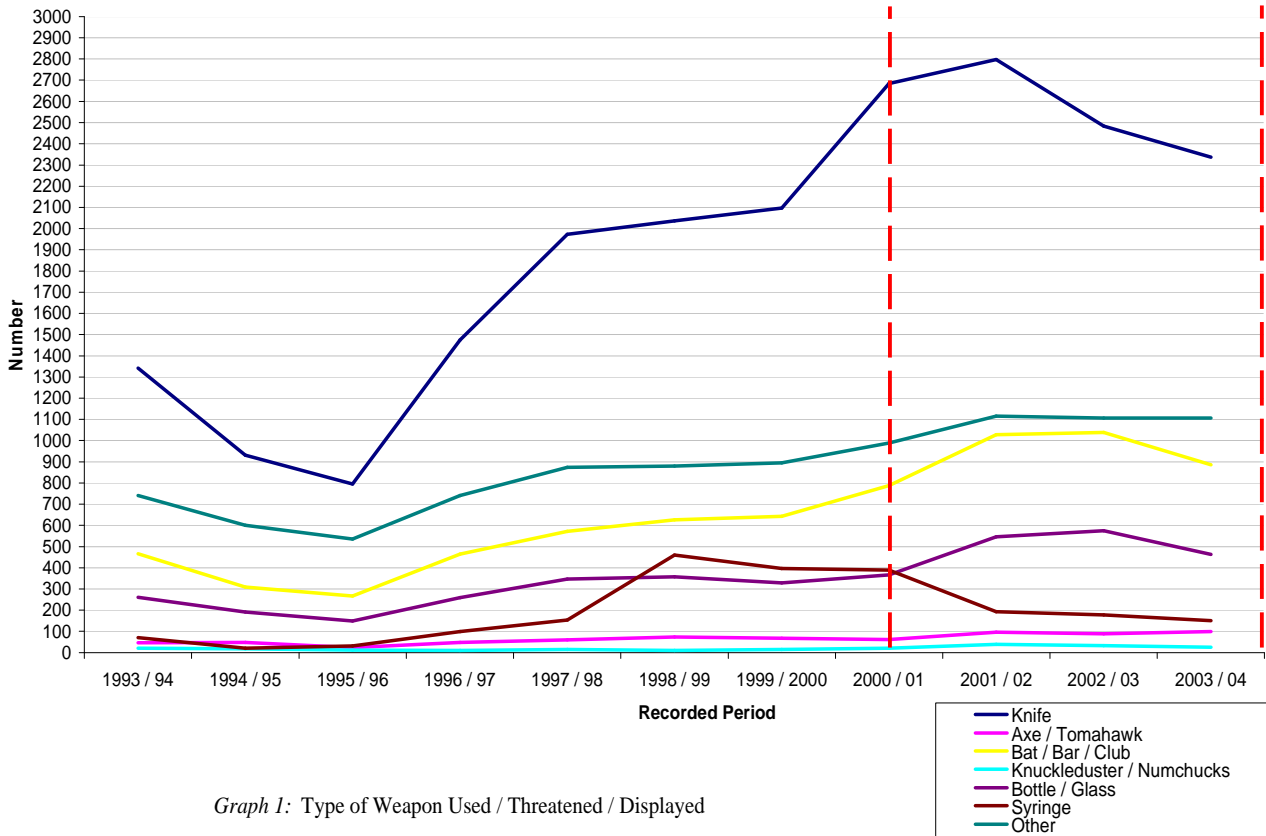
Graph 1 below shows the number of weapon offences (by weapon category) recorded in Victoria before and after the introduction of the *Control of Weapons Regulations 2000*.¹⁸ The vertical lines indicate when the new regulations came into force. The Official Victorian Crime Statistics prior to 1993 did not provide specific information to this effect, therefore the years between the original Act's introduction (1990) and 1993 have been omitted. Further, the results for period 2004 / 2005 are yet to be officially released, and the provisional statistics¹⁹ do not proffer this information.

¹⁶ Expert 1.

¹⁷ Experts 1, 2 & 3.

¹⁸ Statistics from Victorian Police Official Crime Statistics 1993/1994 – 2003/2004

¹⁹ Victoria Police, *Provisional Crime Statistics 2004 / 2005*, 10 August 2005, <http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=610> (11 October 2005)



Graph 1: Type of Weapon Used / Threatened / Displayed

Source: Victorian Police Official Crime Statistics 1993/1994, 2003/2004

As can be seen in the figure above, the number of weapons used, threatened or displayed has not decreased significantly over the past decade. In fact, the use of many weapons (especially knives) has shown a steady increase, especially between 1995 – 1997 and 1999 - 2001. The regulations introduced in 2000 seem to have had limited effect on this trend, although there has been a slight decline in knife offences in the past 2 years. The effect of the regulations passed in 2004 are yet unknown. Interestingly, the use of syringes (specifically not covered by the Act²⁰) has decreased over the past 5 years.

The potential reasons underlying the Act's inability to effectively reduce weapon offences will be discussed throughout this paper. The big issues of public awareness, weapon categorisation and 'lawful excuses' will be explored in later Chapters. Other areas which could also arguably be improved, Are discussed below.

1.3. Limitations on the Law's Effectiveness

Experts who were interviewed for this project who come into regular contact with the law and its practical effects have identified a number of aspects of the legislation which they feel are problematic. Firstly, it is believed that the weapon registration and exemption provisions do not afford much community protection. As will be discussed below, the amount of paperwork and costs

²⁰ Department of Justice, above n 6 at 3.

necessarily incurred to obtain an exemption to purchase and own a prohibited weapon is seen as too onerous, unnecessarily burdening law-abiding citizens.²¹ Secondly, although the Act prescribes penalties for those who purchase *and* those who sell prohibited weapons without an exemption or who follow the incorrect procedures, experts considered that the police are placing too great an emphasis on those carrying the weapons, instead of focusing on those responsible for placing them in that person's possession.²² Thirdly, the offences prescribed under the Act have been criticised for not reflecting the varying seriousness of the Acts they cover²³ and, finally, the penalties provided are seen as inhibiting the Act's effectiveness by demanding too much police resources.²⁴

1.3.1 Exemptions, Approvals and Weapon Registration

Under *Section 5* of the Act, a person is allowed to carry, possess, purchase or own a prohibited weapon if they have an exemption²⁵ or an approval.²⁶ To obtain an exemption from the Governor in Council and/or an approval from the Chief Commissioner of Police, a person must apply in the prescribed manner and pay a monetary fee. A fee must then be paid every year to register the weapon in question.

The aim of these provisions is to identify the weapons presently in the community as well as their owners in case those items are later used in an offence. The fees were deemed to be necessary to "ensure that both the Government and non-firearms owners make a reasonable contribution to the costs of administering the law."²⁷ Further, the Department of Justice felt that the cost involved was justified by the "benefits flowing to the community in terms of increased public safety."²⁸

However, these provisions have been criticised by an expert in the field.²⁹ It is counterintuitive to say that the people who register their weapons are the ones likely use them to commit an offence. Robbers, gangs and other criminals are not going to furnish the police with details which may be used to convict them for future offences. As noted by another commentator, the practical effect of these provisions is to make it difficult and expensive for the honest people; the genuine collectors, the martial artists and the hunters. Placing onerous registration requirements on these persons is unfair and, as can be seen from Graph 1, does not appear to be helping reduce weapons crime.

²¹ Experts 2 & 3.

²² Experts 1, 2 & 3.

²³ Expert 2.

²⁴ Ibid.

²⁵ *Control of Weapons Act 1990* (Vic) s 8B.

²⁶ Ibid s 8C.

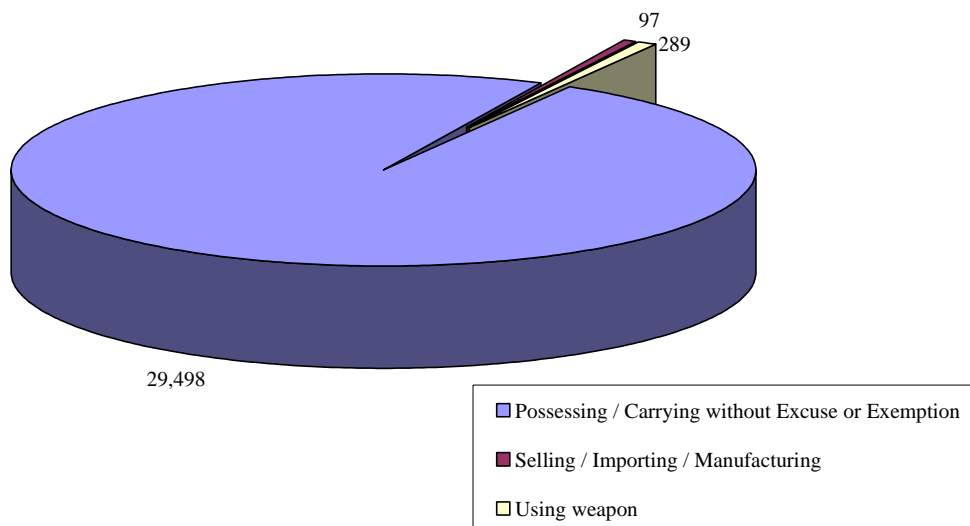
²⁷ Department of Justice, above n 6 at 18.

²⁸ Ibid at 21.

²⁹ E.g. Expert 2.

1.3.2 Vendors & Purchasers: Targeting the Source

It is interesting to note the offences under the Act with which people are most often charged. As is clearly evident in Graph 2 below, the majority of recorded offences have been for being in possession of, or carrying, a weapon (Prohibited, Controlled and Dangerous Articles).³⁰



Graph 2: Weapons Offences Charged 1993 - 2004

Source: Victoria Police, *Official Crime Statistic 1993-2004*

A number of interviewed experts argued that the Act would be more effective if a greater emphasis was placed on stopping weapons from entering the streets instead of dealing with them once they are there.³¹ When the Bill regarding the 2000 Regulations was debated in the Legislative Assembly, it was noted that the laws relating to the sale of weapons and the recording of purchasers' information was critical. The availability of knives and other deadly weapons was duly recognised as a matter of serious concern:

If one wanders around any of the major disposal stores anywhere in the city...one will find a vast array of weapons on display. It is a frightening experience to see the display of extraordinary weapons that are available and it is hard to imagine what one would do with them... Perhaps they are appreciated as collection items, but certainly their potential use is a frightening thought³².

Indeed, the potential damage caused by flick-knives and samurai swords is immense, and as such there should be some regulation on who has ownership of such a weapon. It is for this reason that extensive identification³³ and record-maintenance³⁴ sections were included in the 2000 regulations. However, Graph 2 reveals, very few sellers of these weapons have been targeted by the Control of Weapons laws. It may be argued that this is because vendors are rigorously complying with

³⁰ Victorian Police, *Official Crime Statistics 1993 / 1994 – 2003 / 2004*.

³¹ Anonymous Experts 1 & 2.

³² Mr Wynne, above n 9 at 1956.

³³ *Control of Weapons Act 1990 (Vic)* s 5A.

³⁴ *Ibid* s 5B.

the statute, however this seems highly unlikely. Despite the massive crackdown on people in possession of (or carrying) these implements, the crime rate and use of these weapons in crime (Graph 1) has not diminished accordingly. A cynic might conclude that it is easier for the police to go after the little fish rather than the big fish.³⁵ Ensuring sellers comply with the legislation (whether they are flouting the laws on purpose or due to a lack of knowledge) would not only limit the number of weapons in public possession, but also provide police with an “audit trail” by which to link weapons used in crimes to their owners³⁶. Further, as the vendor would need to explain to the purchaser the reasons behind records being kept, it would enhance public awareness of the laws on weapons. Enhanced awareness would thereby minimize the number of persons carrying weapons in public areas without knowing they are not allowed to do so (see Chapter 4 for a further discussion on vendor and public awareness).

1.3.3 Offences and Penalties under the Act

Under *section 5* of the Act, the prescribed penalty for *possessing/carrying* a prohibited weapon is the same as for *using* a prohibited weapon (120 penalty units or 6 months imprisonment). Similarly under *section 6*, the penalty for *possessing/carrying* a controlled weapon is the same as for *using* a controlled weapon (60 penalty units or 6 months imprisonment). It is accepted that being in possession of an offensive weapon on the streets of Victoria (even for self protection or without ill-intent) is inappropriate and has the potential to cause serious damage should an incident arise. However, it is argued that the act of *carrying* a weapon is very different to actually *using* the weapon to threaten another or in the furtherance of a crime and, accordingly, this should be reflected in the legislation.³⁷

All those interviewed for this report agreed that many people charged under this Act were charged because they either did not know it was illegal to carry the ‘prohibited’ items without an exemption or they responded [according to the police] that they were carrying the item “for self-defence”. (see a further discussion on this issue in Chapter 2). Moreover, most of the defendants in recent times have been young people who had previously been threatened with violence and were in fear for their safety. Consequently, they carried the implement in case they needed to defend themselves.³⁸ We submit that culpability cannot reasonably be held to be the same as say a robber or rapist who uses the weapon to intimidate another. As such, the penalties in the Act should reflect this difference by providing a hierarchy of offences. *Using* a prohibited weapon should carry with it a greater penalty than *carrying* or mere *possession* of a prohibited weapon, and the same should apply for controlled weapons and dangerous articles.

³⁵ Experts 1 & 3.

³⁶ Department of Justice, above n 6 at 17.

³⁷ Expert 2.

³⁸ Experts 1 & 3.

1.3.4 Practical Efficiency and Law Enforcement

An expert interviewed for this paper, raised some practical difficulties associated with the current legislation. For example, when an individual is charged under the Act for 'possessing/carrying a prohibited weapon without an exemption or a controlled weapon without lawful excuse', the time and resources required to bring that person to court are considerable. It has been argued that the extensive hours and paperwork that the police are required to undertake are so great that law enforcement officers may in fact be deterred from performing searches under *section 10* of the Act.

Consequently, it has been suggested that 'on-the-spot' monetary fines or penalty infringement notices, much like a speeding ticket or a public transport fine, be imposed on those found to be carrying or in possession of a weapon without lawful excuse or exemption.³⁹ The benefits of this would be two-fold. Firstly, the time and resources demanded of the police force would be greatly reduced, thereby allowing officers to get on with more pressing matters. Secondly, it has also been suggested that infringement notices could have a beneficial deterrent effect on those persons who carry weapons without intending to use them for criminal purposes. Those persons would arguably be less likely to carry a weapon if they face receiving a significant monetary fine each time they are found to have that weapon on their person.⁴⁰

1.4. Conclusion & Recommendations

We make the following recommendations:

Recommendation 1: That the burdens of registering of prohibited weapons and the costs involved be made less onerous, so that honest and genuine collectors and sportspeople are not unjustly penalised.

Recommendation 2: That Police target the *vendors* who are selling weapons without having been exempted or who do not follow the legislated procedures of identification collection and record keeping.

Recommendation 3: That a hierarchy of offences be created to recognize the varying seriousness of those offences. For example, penalties for threatening or otherwise *using* weapons be made more severe than penalties for mere possession.

Recommendation 4: That 'on-the-spot' fines / penalty infringement notices be introduced to maximize time and other resources as well as deter persons from carrying such weapons.

³⁹ Expert 2.

⁴⁰ Ibid.

Chapter 2

When a Bottle Opener is a Weapon

By Dianne Duncan

2.0. Introduction

The *Control of Weapons Act 1990* (Vic) (the Act) was introduced to help protect the community via the regulation of weapons. Whilst the previous chapter discussed its effectiveness, this chapter will consider some key problems that have been identified in the legislation. In particular, this chapter will:

- Discuss problems associated with weapon definition.
- Consider the concept of a *lawful excuse*; in particular, its relationship with self-defence.
- Discuss *access to justice* in relation to a charge under the Act.
- Discuss the offences and penalties available under the Act, and consider a more hierarchical approach to weapon offences.
- Evaluate the relationship that the *Control of Weapons Act 1990* (Vic) has with Australian Customs.

2.1. Definition of a Weapon

A definition of a *weapon* is not given in the *Control of Weapons Act 1990* (Vic). The Act instead creates categories for weapons; i.e. prohibited weapons, controlled weapons and dangerous articles. These categories of weapon will be briefly described, followed by several concerns that have become apparent as a consequence of such classifications.

2.1.1 Prohibited Weapons

‘Prohibited Weapons’ are considered “totally inappropriate for general possession or use because of their exclusively offensive nature (e.g. flick knives, daggers, knuckle-dusters and blow guns.”⁴¹ For a person to be in possession of a ‘prohibited weapon’ it is mandatory that they have an exemption from the Chief Commissioner of Police.⁴²

2.1.2. Controlled Weapons

‘Controlled Weapons’ are “weapons that can be used for legitimate purposes but which need to be regulated because of the danger they pose if misused (e.g. spear guns, some martial arts

⁴¹ Department of Justice Victoria, above n 6 at 4.

⁴² *Control of Weapons Act 1990* (Vic) s 8C

equipment and knives.”⁴³ A person is able to carry a ‘controlled weapon’ only if they have a lawful excuse. Of note, the legislation specifically states that a lawful excuse for the purposes of ‘controlled weapons’ does *not* include self-defence.⁴⁴

2.1.3. Dangerous Articles

‘Dangerous Articles’ are “other articles which are adapted or carried for use as a weapon (e.g. baseball bats)”.⁴⁵ Similarly to ‘controlled weapons’, if a person has a ‘dangerous article’ on their person they must have a lawful excuse. However, unlike ‘controlled weapons’, self-defence *is* a legitimate reason to carry a ‘dangerous article.’⁴⁶

2.2. Definitional Concerns

2.2.1 Inconsistency in Classifications

The *Control of Weapons Act*⁴⁷ and *Regulations*⁴⁸ were implemented to enhance public safety.⁴⁹ In particular, it was decided that certain items that were dangerous and offensive were to be made *prohibited* and therefore, be highly regulated.⁵⁰ However, it is unclear on what specific basis weapons are actually categorized. For example, on July 1 2004, the sword was elevated to the status of a *prohibited weapon*.⁵¹ It is contended that the decision to do this was reactionary and rather than enhance public safety, this modification simply makes it difficult for the honest collector. As will be canvassed in detail below, during the late 1990’s and early 2000’s there were some highly publicised crimes involving swords (e.g. the *Highlander*⁵² and *Salt Nightclub*⁵³ incidents). These incidents do not represent the vast majority of sword collectors. In fact it would be difficult to argue that the people involved in such incidents would be the type to seek exemption from the Chief Commissioner of Police or to forfeit their weapon on the basis of its *prohibition*.⁵⁴ It may be argued that changing the status in the legislation of ‘sword’ to a “prohibited weapon” simply makes it ‘difficult for the honest person’.⁵⁵

Problems have also been identified in regards to ‘controlled weapons’; in particular, it is unclear what the criteria are for such a categorisation. For example, in 2000, the cattle prod was made a

⁴³ Department of Justice Victoria, above n 6 at 4.

⁴⁴ *Control of Weapons Act 1990* (Vic) s 6(3).

⁴⁵ Department of Justice Victoria, above n 6 at 4.

⁴⁶ *Control of Weapons Act 1990* (Vic) s 7 (3).

⁴⁷ *Control of Weapons Act 1990* (Vic)

⁴⁸ *Control of Weapons Regulations 2000* (Vic)

⁴⁹ Department of Justice Victoria, above n 6 at 2.

⁵⁰ *Ibid* at 8.

⁵¹ *Control of Weapons (Amendment) Regulations 2004* (Vic)

⁵² McDonald L, ‘Sword wielding man held after stand-off’, *The Age*, 7 May 1997.

⁵³ Hodgson S, Smith C & Buttler M, above n 14.

⁵⁴ Anonymous Expert 2.

⁵⁵ *Ibid*.

'controlled weapon'.⁵⁶ This was done in response to the fact that "cattle prods have been used on humans to inflict injury."⁵⁷ The new regulations will mean that "persons will still be allowed to possess cattle prods, provided their possession is consistent with a lawful excuse, such as for animal management."⁵⁸ Conversely, items such as the 'axe' or 'tomahawk' are not classified as 'controlled weapons'. This is difficult to reconcile when it is noted that statistics published by *Victoria Police* demonstrate that axes and tomahawks were involved in 97 crimes (3 were homicides) during the period of 2001-2002 and gave no specific mention of cattle prods.⁵⁹ Accordingly, it is questionable how it is determined what items (weapons) are to be controlled and which ones are not.

2.2.2. Knives

Crime statistics published by *Victoria Police* indicate that the vast majority of weapon crimes involve the use of *knives*.⁶⁰ This is unsurprising as knives are common, easy to conceal and simple to use. Certain types of knife have been *prohibited* since the enactment of the Act, for example, flick knives, butterfly knives and daggers. However, the more generic style of knife has now been raised to the status of a 'controlled weapon'. How broad is the term "knife"?

It is contended that the definition of a 'knife' may be open to abuse. The title of this Chapter, "When a bottle opener is a Weapon", is a reference to a case t the West Heidelberg Community Legal Service was involved in. Consider the following scenario:

A woman is searched. There is a cheese knife (about 10cm in length) and two bottle openers in her bag. When asked why she had a cheese knife, she responded that it was handy for use on "scratchies". No problem. When asked why she had bottle openers, the problems arose. The woman allegedly responded to police questions by saying that she had one of the bottle openers for protection. What resulted was a finding of guilt for possessing a 'controlled weapon..

The bottle opener was considered to be a 'controlled weapon' as it had a small knife folded into its side. It is highly contentious whether this scenario is what Parliamentarians had in mind when making knives 'controlled weapons'⁶¹. Nonetheless, the possession of the bottle opener alone was not the only problem in the above scenario, it was the reason behind that possession; namely, *protection*. Carrying a 'controlled weapon' for reasons of self-defence is *not a lawful excuse*.⁶²

2.3. Lawful Excuse

A *lawful excuse* involves a number of reasons for possessing a weapon, including having the weapon for a legitimate collection, sporting use and employment purposes. These are not particularly

⁵⁶ *Control of Weapons Regulations 2000* (Vic).

⁵⁷ Department of Justice Victoria, above 6 at 16.

⁵⁸ *Ibid.*

⁵⁹ Victorian Police, *Official Crime Statistic*, 2001 / 2002 at 116.

⁶⁰ *Ibid.*

⁶¹ Expert 3

⁶² *Control of Weapons Act 1990* (Vic) s 6(3).

controversial. The main concern stemming from *lawful excuse* is in relation to the exclusion of *self-defence* for 'controlled weapons' and its inclusion for 'dangerous articles'. This appears to be an anomaly.

2.3.1. The Exclusion of Self-Defence as a Lawful Excuse for Controlled Weapons

Self-defence is a concept well known to the criminal law.⁶³ A person may do whatever is *reasonable* in all of the circumstances to protect themselves from an attack.⁶⁴ However, possession of a knife in anticipation of an attack is problematic. The issue not clearly addressed by the Victorian legislature is whether a person can be permitted to possess a knife if their *sole* reason for carrying it may not relate to self-defence. The motivation behind excluding self-defence as a legitimate reason to carry a weapon is clear; this would sanction an environment where people walked the streets with weapons 'just in case'. As stated by Mr Haermeyer in Parliament, this may "create a mood of violence."⁶⁵

A key problem with the Act and its stance on self-defence is that it fails to acknowledge the prevalence of multi-purpose devices in the community, for example, Swiss Army Knives. It is arguable that many people carry around such knives for a variety of reasons, e.g. for cutting up food, use of the nail file or even the detachable tweezers which are a common feature of such knives. It is acknowledged that these knives may also be used, if necessary, for self-defence. However, it is suggested that many who use such devices for multi-purposes may only inform police that they have it for 'protection' or 'self-defence', thus seemingly making the possession unlawful. It is doubtful that such multi-purpose devices are what the legislation was designed to target..

Accordingly, such outcomes may be averted if the Victorian Government implements a similar style of legislation as used in New South Wales.

New South Wales law

New South Wales addresses the issue of knives differently. Specifically, in the *Summary Offences Act 1988* (NSW) the phrase *reasonable excuse* is used instead of *lawful excuse* for determining whether possession of a knife is acceptable. Of interest, *section 11C(3)* states:

*"... it is not a reasonable excuse for the purposes of this section for a person to have custody of a knife solely for the purpose of self defence or the defence of another person."*⁶⁶

The addition of the word "solely" in regards to the issue of self-defence may solve problems that have arisen from the Victorian legislation. By including this word it ensures that a court is not forced to

⁶³ McSherry B & Naylor B, *Australian Criminal Laws: Critical Perspectives*, Oxford University Press, South Melbourne, 2004 at 472.

⁶⁴ *Zecevic v Director of Public Prosecutions (Vic)* (1987) 71 ALR 641 at 652.

⁶⁵ Mr Andre Haermeyer, above 7 at 1566.

⁶⁶ *Summary Offences Act 1988* (NSW) s 11C(3).

decide conclusively whether something is to be used for a lawful activity or in self-defence.⁶⁷ This would lessen the likelihood of multi-purpose devices such as the common Swiss Army Knife being targeted as a ‘controlled weapon’. As such, the number of ‘honest people’ being targeted by the legislation would be reduced.

2.3.2. Controlled Weapons and Dangerous Articles

Whilst ‘controlled weapons’ cannot be legally carried for self-defence, this is not the same for ‘dangerous articles’. The definition of a ‘dangerous article’ is quite broad and can incorporate items ranging from baseball bats to keys (if they have been modified to act as weapons). The concept of “lawful excuse” includes self-defence in relation to dangerous articles. [Section 7(3)] However, before self-defence can be considered a *lawful excuse* for the possession of ‘dangerous articles’, factors such as the immediacy of threat, circumstances and location, the age and experiences of the person and the type of dangerous article need to be considered.⁶⁸

An expert interviewed for this project felt that it was necessary that self-defence remain lawful for possession of ‘dangerous articles’ and gave the example of a woman being attacked on her way home and retaliating by using her keys. Whilst this is a valid argument, it seems counterintuitive to contend that a person can possess a baseball bat (a different type of dangerous article) for purposes of self-defence but not a bottle opener.

To avoid this situation, the phrase used for knives in the *Summary Offences Act 1988* (NSW) could also be applied to ‘dangerous articles’. Thus, it is contended that carrying around a dangerous article for the sole purpose of self-defence, like a ‘controlled weapon’, is not acceptable. For example, it would be unlawful to carry around a baseball bat in self-defence. This would not hinder situations such as the example given by the expert of the woman who defends herself with her keys whilst she is attacked, as the sole reason for her carrying her keys was not self-defence.

2.3.3. General Self-Defence vs Specific Self-Defence

A legal professional has suggested that the majority of individuals who carry weapons for self-defence do so for protection from a specific person or gang.⁶⁹ There are practical and theoretical arguments that need to be weighed in determining whether such individuals should be given special treatment and be allowed to possess a ‘controlled weapon’, such as a knife. Firstly, preventing an individual from carrying a knife for protection from a specific individual does not necessarily ‘protect the community’; all it potentially does is perhaps protect an individual from a potential aggressor. Moreover, the mind-set of such a person is different to the person who carries a weapon for general self-defence (e.g. heightened fear).

However, the flipside of this argument is that gangs are routinely threatened and to allow a person to carry a weapon if they have experienced a ‘specific threat’ may sanction the carrying of

⁶⁷ Expert 3.

⁶⁸ *Control of Weapons Act 1990* (Vic) s 7(4).

⁶⁹ Expert 1.

weapons for gangs generally. It is not suggested that a person should be able to carry a controlled weapon when they have experienced a 'specific threat', but simply that the nature of that 'specific threat' be given due consideration in sentencing.

2.3.4. "Knowledge is Power": Knowing what to say

A key concern with the concept of the 'lawful excuse' is that if a person knows what to say, then they potentially have *carte blanche* to carry around weapons. For example, a person can avoid prosecution for possession of a knife if they know to say that they have the knife for cutting their food and not to say that it is for self-defence.⁷⁰ Accordingly, the better educated will know how to avoid weapon related offences, whereas the less educated may not. Issues surrounding public awareness will be canvassed in detail in Chapter 4.

2.4. Concerns with the Penalty Spectrum

2.4.1. What are the Penalties under the Act?

Prohibited Weapons

Regardless of whether an individual brings into Victoria, manufactures, sells, purchases, **possesses or uses** a prohibited weapon, the Act prescribes the penalty as 120 penalty units or imprisonment of 6 months.⁷¹

Controlled Weapons

Regardless of whether an individual **possesses, uses or carries** a controlled weapon without lawful excuse, the Act prescribes the penalty as 60 penalty units or imprisonment for 6 months.⁷²

Dangerous Article

Regardless of whether an individual **possesses or carries** a dangerous article in a public place or non-government school, the Act prescribes the penalty as 60 penalty units or imprisonment for 6 months.⁷³

⁷⁰ Expert 3.

⁷¹ *Control of Weapons Act 1990* (Vic) s 5(1).

⁷² *Ibid.* s 6(1).

⁷³ *Ibid.* s 7(1).

2.4.2. Sentencing hierarchy between possession and threat to use?

In an interview with an expert interviewed for this project it was suggested that there should be a clear hierarchy in offences, particularly in relation to **possession, threat to use and use** of a weapon and that the penalty units should reflect this.⁷⁴ To illustrate the need for this, consider the case involving the bottle opener and compare it to the following scenarios, which have been covered by the media.

Case Study 1:

On 6 May 1997 a man held police at bay outside a Wantirna Church by two swords. He called himself a Highlander and violently threatened police. He was overpowered by police and police dogs.⁷⁵

Case Study 2:

In 2004 there was an Asian {@#% not sure about the expression here, is it appropriate??} gang fight in the Fitzroy Gardens. Weapons used in the affray included samurai swords, baseball bats, machetes and poles. The outcome was significant bloodshed and a man had his hand chopped off by a samurai sword. The fight was pre-arranged via phones and internet.⁷⁶

Case Study 3:

In 2003 a man died after a fatal blow in a brawl at Salt Nightclub that involved knives, nunchakus and a samurai sword. This was the fifth murder that has been linked to the Salt Nightclub. Previous incidents involved a 22 year old man being stabbed to death on the dance floor, a 19 year old man being hacked to death whilst his cousins were drowned in the nearby Yarra.⁷⁷

Such scenarios are clearly different to the situation of a person carrying around a bottle opener in their bag for protection. For reasons of comparison, imagine that the assaults and homicides in the aforementioned scenarios did not happen, and that the gangs carrying the knives and poles ('controlled weapons' and 'dangerous articles') were stopped before they reached the *Salt Nightclub*. It is suggested that their offence is considerably different and graver than that of a person who has a pocket-knife in their bag. Accordingly, it is contended that such differences – particularly between possession and threat to use – should be made clear in the legislation. This would also be in line with the purpose of the Act, public safety.⁷⁸ The public is in significantly more danger from those who threaten to use weapons than those who simply carry them for self-defence.

⁷⁴ Experts 1 & 2.

⁷⁵ McDonald L, above n 52.

⁷⁶ Crawford, C, 'Asian gangs in on dealer void', *Sunday Herald Sun*, 8 August 2004.

⁷⁷ Papadakis, M, Crawford C, 'Gangs scoff as club death toll hits five', *Sunday Herald Sun*, 9 November 2003.

⁷⁸ Department of Justice, above n 6 at 21.

2.5. Access to Justice

*Equal access to justice and equality before the law are fundamental elements of a just and civilized society, and are essential in preventing social fragmentation and disorder*⁷⁹

A professional interviewed for this discussion paper also suggested that many people (particularly young people) who are charged with an offence under the Act, but have a lawful excuse, may simply not have the means to defend themselves.⁸⁰ As the majority of people charged under the Act are young people they will not often have the resources to afford a private solicitor. Further, as the penalties for an offence under the Act are not particularly large many would be unable to receive Legal Aid and the facilities at Community Legal Centres are limited. Therefore, even if a young person feels they have a *lawful excuse* for carrying a 'controlled weapon' or 'dangerous article', they will often not contest the issue as they do not have the resources to follow through with the proceedings.⁸¹

2.6. Inconsistencies between Weapons Legislation and Customs

It is important that laws are consistent. A major problem that an expert highlighted was in relation to the differences between Australian Customs Law and the *Control of Weapons Act 1990* (Vic). Specifically, the expert discussed the problems that he experienced as a consequence of the disparity between what is allowed through Customs compared to what is prohibited under the Act. For example, the importation of swords is prohibited into Victoria, but not prohibited by Australian Customs.⁸²

The expert acknowledged that Customs officials do inform police of large importations of *prohibited weapons*.⁸³ Consider the hypothetical scenario of a person who imports 100 swords.

Customs inform police of the importation. The police then track down the individual and inform them of the procedures in Victoria that need to be satisfied for possession of prohibited weapons. The police give the individual the opportunity to follow the correct procedures but the individual repeatedly fails to do so. The police then need to go and seize the swords.

It is arguable that this level of police involvement could be avoided if the *prohibited weapons* were taken at Customs. This would force the person to immediately seek and be granted approval before they take the *prohibited weapons* into the community. This has the benefit of reducing police workload and ensuring that *prohibited weapons* are not brought into the Victorian community without appropriate approvals.

⁷⁹ Rix, M & Burrows, S, 'The foundations of legal citizenship: Community law, access to justice and the community legal sector' (2005) 30(3) *Alternative Law Journal* 126 at 130.

⁸⁰ Expert 1.

⁸¹ Ibid.

⁸² Expert 2.

⁸³ Ibid.

This suggestion may be of particular assistance in relation to the upcoming Commonwealth Games where many international guests will be unsure what is and is not prohibited and controlled in Victoria. Public education in relation to this will be canvassed in detail in Chapter 4.

2.7. Conclusions and Recommendations

The public benefit of ensuring that weapons are controlled in the community is clear. However, to ensure that the Act does what it is supposed to do and does not lead to contentious outcomes, improvements can be made.

Recommendation 5: The factors that determine classification of a weapon as *prohibited*, *controlled* or a *dangerous article* should be made clearer.

Recommendation 6: The NSW *Summary Offences Act 1988 section 11C(3)* should be adopted in Victoria to determine whether somebody has a lawful excuse for a 'controlled weapon' or a 'dangerous article' in regards to self-defence. That is, self-defence should not be the primary purpose that a person has an item, but may be ancillary.

Recommendation 7: An offence hierarchy should be introduced; for example, distinguishing between offences of possession and threat to use.

Recommendation 8: Prohibitions under the *Control of Weapons Act 1990 (Vic)* should be reflected at Customs so that *prohibited weapons* do not get into the community without approval.

Chapter 3

The Importance of Community Legal Education

By Karen Bell

3.1 Introduction

It is a fundamental international human right that every Australian citizen is equal before the law.⁸⁴ Such rights, although not automatically enforceable as Australian law⁸⁵, provide moral standards that Australia has agreed to meet to ensure a dignifying existence for every human being.⁸⁶ However, as ignorance of the law is said to be no excuse, when the law is confusing or access to legal information inadequate⁸⁷, it can be seen that such equality cannot be achieved. It is believed that structure, use and public information about the *Control of Weapons Act 1990 (Vic) (The Act)* poses such a concern for the rights of many Victorians. The responses to interviews conducted for this project revealed that certain groups of the community are increasingly targeted and adversely affected by *the Act* and there was a lack of general awareness of *the Act*. These groups include Victorian young people, and people from non-English speaking backgrounds. Also members of the wider community may honestly purchase items without being informed from the seller that possession may be illegal. As these aforementioned groups are at greater risk under the provisions of *The Act*, the importance of a long term and dedicated community legal education campaign for such groups will be discussed.

Due to the limited number of interviews conducted for this project, the information gained will not be used for statistical analysis but rather for the identification and discussion of areas of concern, and suggested recommendations to address these.

3.2 Community Education Material Available

A formal Weapons Community Education campaign was undertaken to coincide with the introduction of *The Act* in 1990. This was undertaken at the initiative of the Ministerial Crime Prevention Council⁸⁸ as one of the elements of Crime Prevention Victoria's overall Safer Streets and Homes Strategy aiming to reduce crime and violence in the Victorian community.

A \$550,000 grant was given to this campaign to provide general community education about *The Act*. This campaign was conducted through the use of a full colour pamphlet, radio advertising, an advertisement in the Age newspaper and posters which all outlined the 'consequences of carrying weapons' on the individual and their family. All of these were undertaken in English, however the

⁸⁴ Dicey, AV, *Introduction to the Study of the Law of the Constitution*, 10th ed Macmillan 1959; Piotrowicz R and Kaye S, *Human Rights – in international and Australian Law*, Butterworths, Sydney 2000 at 5

⁸⁵ Gifford T, *Where's the Justice? A Manifesto for Law Reform*, Penguin Books Ltd, NSW, 1986 at 115

⁸⁶ Azzopardi E, *Human Rights and Peoples*, Macarthur Press Pty Ltd, Parramatta, 1988

⁸⁷ Connellan G, "The Rule of Law – Access to Justice is not optional", Chapter 5, *A Just Society*, Victorian Law Foundation, Melbourne, 1999

⁸⁸ Appointed by The Hon. André Haermeyer MP, Minister for Police and Emergency Services

pamphlet is available through Information Victoria⁸⁹ or on line where it is translated into 10 community languages.⁹⁰

While this campaign may be cost effective for reaching a wide audience, the community groups previously identified as being most affected and in need of such education do not appear to have been considered. The focus is on more effective enforcement of the Act rather than educating the people that are in greater need. It is not considered that people from non-English speaking backgrounds may not have access to the internet or have the knowledge that this information is accessible. The utilisation of written material for education needs also to be considered, as many cultures are more likely to discuss information in a forum or through word of mouth. Furthermore, it is questionable how many in the specifically affected groups read the *Age* newspaper.

An interviewee noted the need for an updated community education campaign. However, a recent tender submitted for funding of such a campaign was rejected by the Department of Justice. In response to this, another person interviewed questioned why enforcement bodies would want to increase community awareness, stating that *The Act's* wide powers currently work well for the police.

The funding issues for an effective community legal educational campaign have been addressed in Western Australia. In that State, a number of concerned stakeholders, including community groups, government funded bodies and individual community members campaigned for and combined resources to be used to develop education tools for the community on their relevant weapons Act⁹¹. This joint participation has allowed for the community education to be increased without the need to rely solely on government funding. In addition, the development of local resident action groups that promote shared community ownership and guardianship may be more beneficial than a general campaign where main groups of concern can often be lost in the process.

The introduction of a joint community education venture of relevant stakeholders, similar to that of Western Australia, may be beneficial in providing better community legal education in Victoria. A number of existing individual Victorian bodies are already seen to address the need to provide community legal education. Combining resources, ideas and activities has the potential to result in the ability to access more people in the community through the development of a detailed and long term strategic education plan. Furthermore, the development of a committee that meets specifically to discuss the effect of the act on the community and educational strategies could be valuable for the long-term commitment to this campaign.

Victorian bodies that currently offer some community education include:

- Victoria Legal Aid
- The Law Institute of Victoria
- The Federation of Community Legal Centres

⁸⁹ ph 1300 655 356

⁹⁰ Department of justice <<http://www.justice.vic.gov.au/CA2569020010922A/page/Safety-Crime+Prevention-Weapons+Community+Education+Campaign?OpenDocument&1=0-Safety~&2=0-Crime+Prevention~&3=0-Weapons+Community+Education+Campaign>> (11 September 2005)

⁹¹ Australian Institute of Criminology, *AICrime reduction matters* (20 May 2003) <<http://www.aic.gov.au/publications>> (28 September 2005)

- Refugee and Immigration Legal Service
- Youth Law

These will now be examined:

Victoria Legal Aid

Section 6(2)(d) of the *Legal Aid Act 1978* (Vic) provides that the body may initiate and carry out community education. Legal Aid provides freely available community education material to the community. Information is available via their web site in 26 community languages, with specific reference to youth issues including *The Act* and information for immigrants and refugees. A free regular e-newsletter outlining the services, publications and events targeting culturally and linguistically diverse communities is also available.⁹² Once again however, accessing this information is limited to people in the community who have access to the internet and who are aware this is available.

Law Institute of Victoria⁹³

The Law Institute works to improve the law so that it better serves a changing society and aims to increase a public understanding of the law

*Federation of Community Legal Centres*⁹⁴

Provides accessible community education information through information sessions, brochures and advice throughout Victoria

Refugee and Immigration Legal Centre

RILC is a provider of education and training in all aspects of Australia's refugee and immigration program.

⁹² Victoria Legal Aid <<http://www.legalaid.vic.gov.au/main1.cfm?CategoryID=2&TopicID=480>> (18 October 2005)

⁹³ Law Institute of Victoria <<http://www.liv.asn.au>> (18 October 2005)

⁹⁴ Youth Law <<http://www.youthlaw.asn.au/content/pubframe.html>> (18 October 2005)

*Youth law*⁹⁵

Youth Law has developed and also operates a number of educational programs throughout the Victorian community. These include:

- Peer education programs, with the aim to communicate the law through peers in an informal and formal basis
- Teachers kit programs, being undertaken in conjunction with Victoria Legal Aid to develop an innovative and practical teachers' kit for secondary school teachers, peer educators, community legal centre education workers and youth advocates, linking relevant legal issues into school curriculum objectives in SOSE (Studies of Society and the Environment).

All of these agency programs present worthwhile opportunities to connect with the community and various vulnerable groups within it about the Act.

3.3 Educating Young People.

While the government makes an effort to inform potential victims of their legal rights, it should also inform potential offenders of the legal consequences of their actions. It was revealed in Interview 1 that young people are targeted under *The Act*. Therefore, it can be seen that an education campaign specifically targeting youth's regarding the provisions and potential consequences if the Act is breached is essential.

The formal education campaign, as previously discussed, made reference to the impact of *The Act* for young people in its message. However, this message was included along with information that did not relate to young people. The information was delivered in a clinical manner and included a message from the Minister to whom many young people may not relate. Education and health promotion strategies advise that in order for an educational campaign to be successful, it is essential that the messages and word choices⁹⁶ used are directed at the target audience in a way that it is understood that the information is important⁹⁷. It is advised that further research be undertaken into the reasons behind the behaviour and attitudes sought to be prevented. To create the impact required, educational program designers need to look at the ways to get the audience to process the information in an active way.⁹⁸

Knowledge based campaigns may not always affect young peoples attitudes towards dangerous behaviour.⁹⁹ Therefore, promotional strategists also suggest that other educational programs and tools, such as youth programs can are successful in increasing young people's awareness of issues that affect them¹⁰⁰. Victoria Police have recognised the need for different

⁹⁵ Ibid

⁹⁶ Maibach E and Parrott R L (ed), *Designing Health Messages*, Sage Publications Inc, California, 1995 at 2

⁹⁷ Ibid at 26

⁹⁸ Ib at 9

⁹⁹ Goodstadt M S & Mitchell E, 1990, Prevention theory and research related to high risk youth. In E N Goplerud (Ed), *Breaking new ground for youth at risk: Program summaries* (pp 7-23) (Tech. Rep. 1) Washington DC: Office of Substance Abuse Prevention as cited in note 14 at 114)

¹⁰⁰ Note 14 at 1

education tools, developing a specific power point presentation about *The Act*, which is shown in Victorian high schools. It was noted in Interview 2 this has been well received. However, how often this is shown and impact of its message in relation to youth attitudes and their knowledge about *The Act* has not been documented. It is asserted that the level of importance and cognitive effort that a young audience gives to an educational message is based on their personal involvement with the topic in issue.¹⁰¹ To increase such involvement, educational tools that are novel¹⁰² or designed to invoke a sense of personal responsibility have been found to motivate such young people's involvement.¹⁰³

A successful education campaign among young people requires long term planning and commitment from government and relevant stakeholders of the need to provide a comprehensive and consistent message.¹⁰⁴ Such influences can come from peers, families, school programs, churches and community groups. Post campaign and ongoing investigation of the issue is important to evaluate the campaigns effectiveness and ensure the campaign's message remains relevant, while evaluating the need for further communication.¹⁰⁵

3.4 Educating sellers and suppliers

Education in schools needs to be reinforced by state and community intervention of the sellers/suppliers of the weapons. Section 5A and 5B of *The Act* place a responsibility to not sell prohibited weapons without a legitimate purpose. Should these sections not be enforced, as Interviewee 3 noted, *The Act* can be seen as targeting the community not the sellers. Interviewee 2 noted that it was essential that we get to the source of the problem.

The government's formal community education campaign, specifically made mention that the campaign would 'target retailers to gain their support to make it even more difficult for people to obtain weapons'.¹⁰⁶ However, Interviewee 1 revealed that legitimate purchasers, who are subsequently charged under *The Act*, are often not informed by the seller that the item is considered a prohibited weapon. This is a problem as it demonstrates that an educational campaign specifically targeted at the sellers is essential to achieve *The Act's* purpose.

¹⁰¹ Petty R E & Cacippo JT, 1986. The elaboration likelihood model of persuasion, *Advances in Experimental Social Psychology*, 19, 123-205 designing health messages as cited in note 14 at 8

¹⁰² Louis M R & Sutton R I, 1991, Switching cognitive gears: From habits of mind to active thinking, *Human Relations*, 44, 55-76 as cited in note 14 at 10

¹⁰³ Note 14 at 11

¹⁰⁴ Note 14 at 124

¹⁰⁵ Note 14 at 172

¹⁰⁶ Note 8

3.5 Educating People from Non-English Speaking Backgrounds

Australia prides itself on being one of the most multi-culturally diverse countries in the world. Statistics show that over 1,000,000 Victorian residents were born overseas, with over 180 languages and dialects being spoken in 21% of all Victorian homes.¹⁰⁷ However, through interview responses, literature review and this writer's experience on clinical legal placement at the West Heidelberg Community Legal Service, access or knowledge of the law has been seen as lacking general support from authorities that are there to protect them.

As has previously mentioned, ignorance of the law is no excuse. However, as there is currently no formal requirement to educate recent refugees or immigrants on relevant Australia's law or ways to access to legal assistance, the ability to abide by this principle seems out of reach for many non-English speaking people. As was pointed out in Interview 3, these people are not ignorant about *The Act*, they are simply not adequately informed. This is the responsibility of the State.

While it is true that access to information regarding *The Act* and other Australian law is available via the internet the fact remains that people requiring this need to have access to the internet and the knowledge that the information is available. Some of these problems, therefore, could easily be rectified through the provision of information or basic education about the Australian legal system to new refugees or immigrants.¹⁰⁸ Just as specific processes are taken to best educate young people, the development of a community legal education campaign needs to take into account any specific cultural aspect or behaviour of the community to which the campaign is aimed into consideration. Specifically in relation to the Somali community of West Heidelberg, consideration of the fact that many Somalis fear the people that are put in place to protect them should be considered when developing a community educational campaign.

The provision of community legal education for people from non-English speaking backgrounds is also relevant in the context of Chapter 3's discussion. People residing in the areas considered under *The Act* to have a higher propensity for crime, are more likely to be refugees or immigrants with limited or no English speaking ability, as these areas have lower living costs and an already established cultural identity. The provision allowing for searches due to reasonable suspicion is of great concern as it is based on a subjective rather than objective test. Community awareness of *The Act* needs to be raised in communities less likely to be educated on *The Act*, while more likely to be targeted by the Police.

3.6 Educating the General Community

As detailed in Chapter 2, confusion surrounds the provisions and purpose of *The Act* by both the public and professionals working in this area. The need to develop an educational strategy to

¹⁰⁷ Victorian Office of Multicultural Affairs <www.voma.vic.gov.au> (18 October 2005) as cited note 10

¹⁰⁸ Access to Justice Advisory Committee, *Access to Justice: an action plan*, AGPS, Canberra, 1994, p.xxx, p 32

reduce such confusion, and clearly inform the community about the Act, was noted by all interview respondents and in the literature review.

While this confusion has been revealed in these interviews and literature review, it can be said that the community has been persuaded that such powers are needed to ensure a safe community¹⁰⁹. However, it is only when people object to the treatment under the act or speak out about the confusion that a different voice is heard. It is an issue that the voice of these people is rarely heard due to issues around policing and fear. If the law does not appear to make sense then how can people understand or follow it?

While the formal educational campaign was undertaken when *The Act* was introduced, Interviewee 3 addressed the fact that problems arise when amendments are made to *The Act* and the general public is not aware¹¹⁰. An example of this is knives, which were outside the definition of a weapon are now considered to be included as such. Such amendments are publicly announced. However, it can be assumed that the community groups noted that this act adversely affects will be those less likely to remain up to date with changes to the legal system. Interviewee 3 voiced his opinion that this was a timid way for the legislative to act, believing if they want to create such legislation they should be willing to educate the public of changes to the law.

Although *The Act* is state-based legislation, a lack of community education has the potential to adversely impact on people travelling interstate to Victoria and from overseas where the provisions are different. Interviewee 2 drew a further concern to the fact that conflicting laws exist between *The Act* and the *Customs Act*. As discussed in Chapter Two of this Discussion Paper. Confusion for the community arises here due to the fact the *Customs Act* allows the public to bring certain articles into Australia, which are actually considered weapons under the Victorian Act. There is a concern that there has not been a great deal of effort or thought put into bringing such acts into line with each other. As stated earlier, educating the wider community about the Victorian laws can also be seen to have particular relevance with the Commonwealth Games approaching in 2006g.

3.7 Conclusion and Recommendations

While *The Act* was implemented to play an important role in identifying weapons in the community considered as unacceptable, community legal education of this Act is equally important to create a just and equal society for all citizens. From the research undertaken and discussed in this chapter, it is this writer's conclusion that a new community legal education campaign be investigated, implemented and its effectiveness be assessed. Results also conclude that that it would be beneficial to target a legal education campaign, at least initially, at the groups most affected by *The Act*, which are young people, the sellers and people from non-English speaking backgrounds.

It is recognised, however, that successfully educating the community on the complex area of the *Control of Weapons Act* cannot be quickly achieved. This will require further investigation, funding

¹⁰⁹ Interview 3

¹¹⁰ *Control of Weapons Regulations 2000* (Vic)

and an ongoing recognition of the social responsibility required from all stakeholders. However, it can be said that identifying that a problem exists, and that community legal education is an important first step in a solution.

It is recommended the following should be taken into consideration when developing a new educational campaign with respect to *The Act*.

Recommendation 9: Investigate the potential and benefits of a combined community education campaign with relevant Victorian bodies and stakeholders

Recommendation 10: Research should be undertaken using young people as a resource for determining a long term appropriate youth education plan initially targeting schools in areas that considered under the act as having a higher incidence of crime

Recommendation 11: Investigate appropriate educational tools methods and target an educational campaign at the sellers/suppliers of weapons

Recommendation 12: Investigate specific cultural requirements and develop an appropriate community legal education process for new refugees and immigrants in Australia

Recommendation 13: Specific education programs should be developed for people from non-English speaking backgrounds residing in locations considered under *The Act* as having a high incidence of crime

Recommendation 14: Investigation into appropriate methods to develop an educational campaign regarding *The Act* which can be distributed at customs and potential interstate media campaign in the lead up to the Commonwealth Games in 2006

Appendix A.
Recommendations

Recommendation 1: That the burdens of registering of prohibited weapons and the costs involved be made less onerous, so that honest and genuine collectors and sportspeople are not unjustly penalised.

Recommendation 2: That Police target the *vendors* who are selling weapons without having been exempted or who do not follow the legislated procedures of identification collection and record keeping.

Recommendation 3: That a hierarchy of offences be created to recognize the varying seriousness of those offences. For example, penalties for threatening or otherwise *using* weapons be made more severe than penalties for mere possession.

Recommendation 4: That 'on-the-spot' fines / penalty infringement notices be introduced to maximize time and other resources as well as deter persons from carrying such weapons.

Recommendation 5: The factors that determine classification of a weapon as *prohibited, controlled* or a *dangerous article* should be made clearer.

Recommendation 6: The NSW *Summary Offences Act 1988 section 11C(3)* should be adopted in Victoria to determine whether somebody has a lawful excuse for a 'controlled weapon' or a 'dangerous article' in regards to self-defence. That is, self-defence should not be the primary purpose that a person has an item, but may be ancillary.

Recommendation 7: An offence hierarchy should be introduced; for example, distinguishing between offences of possession and threat to use.

Recommendation 8: Prohibitions under the *Control of Weapons Act 1990 (Vic)* should be reflected at Customs so that *prohibited weapons* do not get into the community without approval.

Recommendation 9: Investigate the potential and benefits of a combined community education campaign with relevant Victorian bodies and stakeholders

Recommendation 10: Research should be undertaken using young people as a resource for determining a long term appropriate youth education plan initially targeting schools in areas that considered under the act as having a higher incidence of crime

Recommendation 11: Investigate appropriate educational tools methods and target an educational campaign at the sellers/suppliers of weapons

Recommendation 12: Investigation into appropriate methods to develop an educational campaign regarding *The Act* which can be distributed at customs and potential interstate media campaign in the lead up to the Commonwealth Games in 2006

Recommendation 18: Specific education programs should be developed for people from non-English speaking backgrounds residing in locations considered under *The Act* as having a high incidence of crime

Recommendation 19: Investigate into appropriate methods and develop an educational campaign regarding *The Act* to be distributed at customs and potential interstate media campaign in the lead up to the Commonwealth Games

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