Control of Weapons Amendment Bill 2010

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NB: Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ http://www.legislation.vic.gov.au.

Introduction

On 25 May 2010, the Minister for Police and Emergency Services, the Hon. Bob Cameron, introduced the Control of Weapons Amendment Bill 2010 (‘the Bill’) into the Legislative Assembly. The purpose of the Bill is to amend the Control of Weapons Act 1990 (‘the Principal Act’) to implement changes which include: the prohibition of the sale of forbidden and controlled weapons to children; the prohibition of the purchase of forbidden and controlled weapons by children; a broadening of the powers of the Chief Commissioner to designate unplanned search areas; to empower police to provide on-the-spot fines for the unlawful carriage of weapons for those over sixteen years of age; and to relax the requirements for independent persons to be present at searches (other than planned designated searches) of children and people with intellectual impairments.

This research brief will provide an overview of the background to this Bill, an outline of the Bill's main provisions, a discussion of youth knife carriage and a comparative analysis of the proposed legislation with other Australian and international jurisdictions.
1. Second Reading Speech

In his second reading speech on 27 May 2010, the Minister for Police and Emergency Services stated that the Bill was giving effect to changes previously announced by the Premier as well as making amendments to improve the operation and effectiveness of Victoria’s control-of-weapons legislation. On 4 March 2010, Premier John Brumby announced the following legislative changes would be introduced: a ban on the sale of weapons to minors; providing police with powers to issue on-the-spot fines for first time offenders caught unlawfully carrying a controlled weapon; and allowing police broader powers to conduct random weapons searches in public areas such as train stations.

Mr Cameron stated that the changes proposed in the Bill were ‘designed to encourage a fundamental change in community attitudes about the carriage of weapons such as knives’. He indicated that the Bill built on government initiatives to reduce knife crime, such as a recent advertising campaign warning young people about the dangers and penalties associated with carrying knives.

The Minister stated that the Bill’s proposals to ban the sale of controlled weapons to children, and to ban the purchase of weapons by children, would decrease the circulation of weapons in the community and curb the development of a ‘knife culture’ among children. He clarified, however, that the new provisions would not make it illegal for a child to possess or use a prohibited weapon with an exemption or a controlled weapon with a lawful excuse. Rather, the changes are designed to remove the opportunity for children to purchase weapons without the knowledge of their parents, guardians or coaches.

He said that increasing the flexibility for the police to conduct weapons searches in unplanned designated areas, such as transport hubs, would result in random searches being undertaken in the most effective and practical way. He also stated that the infringement penalties had been set at ‘a very high level’ to ensure the strongest possible deterrent to people who wish to carry controlled weapons unlawfully.

2. Background

In 2009, police powers to search for weapons were significantly enhanced through the Summary Offences and Control of Weapons Acts Amendment Act 2009. This amending Act empowered police to search any person without warrant in a public place in an area specifically designated for the purposes of this search power. An area could be designated in two ways, planned and unplanned. A planned designated search area required notice to be given to the public at least seven days prior to the search. Planned designations could be made by the police when it was believed that violence or disorder involving weapons had occurred in an area and there was a risk that such violence may recur. A planned designation could take place from the date and time specified in the notice and could last no longer than 12 hours.

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3. Victoria, Legislative Assembly (2010) op. cit.
5. Ibid.
6. Ibid.
Under the amending Act, unplanned designations were designed to cater for more urgent circumstances and did not require the publication of a notice. An unplanned designated area could be declared if it was likely that violence or disorder involving weapons would take place in that area. It was also required that police believe that a designation was necessary in order to prevent or deter the occurrence of such violence or disorder. An unplanned designation could last for no longer than 12 hours from the time the designation was made.\textsuperscript{10}

The amending Act also empowered police to conduct strip searches of people (including children and people with intellectual impairments) during a search without warrant (including in planned and unplanned designated areas). Strip searches were permitted if, after completing a search with an electronic device and a ‘pat down’ search, the police reasonably suspected that the person had a concealed weapon and it was necessary to conduct a strip search to find it; and the seriousness and urgency of the circumstances required the strip search to be conducted.\textsuperscript{11}

Since the provisions in the amended Act commenced on 16 December 2009, there has been extensive media coverage of stakeholder reaction to the searches. Under the new law, searches have been conducted at places including Footscray, North Melbourne, Glenroy, Flinders Street, Sunshine, Springvale, Dandenong, Noble Park and Preston train stations.\textsuperscript{12}

Deputy Commissioner of Victoria Police, Kieran Walshe, said the new powers were important due to the significant rise in weapons crime during the previous twelve months. He indicated that any police action would be justified and appropriate. He stated, ‘[w]e are concerned with people’s rights and respect them but at the end of the day we are also concerned with the community’s rights to be safe in the city and elsewhere’.\textsuperscript{13}

Media reports which include interviews with people who have been randomly searched as part of the new search powers report that the majority of those interviewed are supportive of the measures.\textsuperscript{14} However, there are also reports that some people have been shocked by the searches.\textsuperscript{15}

Some community legal organisations have been critical of the new laws. Chris Ryan, Principal Lawyer at Moreland Community Legal Centre, whose staff monitored the new police search powers at Glenroy railway station stated that:

\textsuperscript{10} ibid.
\textsuperscript{11} Summary Offences and Control of Weapons Acts Amendment Act 2009, s. 7(1) of Schedule 1. Some of the provisions of the Summary Offences and Control of Weapons Acts Amendment Act 2009 were incompatible with Victoria’s Charter of Human Rights and Responsibilities. In particular, the law engaged section 13(1) (right to privacy) and section 17(2) (rights of children). In response to these incompatibilities, the Minister for Police and Emergency Services stated, ‘although the bill is partially incompatible with the charter, the government is of the view that it is necessary and appropriate to provide police with these powers to address the community’s concerns regarding weapons-related offending’. Victoria, Legislative Assembly (2009) \textit{Debates}, Book 14 (revised), p. 4027.
\textsuperscript{15} For example, see Vedelago (2010) op. cit. See also R. Watson (2010) ‘But He’s Only 12’, Letter to the Editor, \textit{The Age}, 12 January.
The majority of people who agreed to complete our survey supported the new police powers in relation to arbitrary search, but we would strongly argue that this is no reason to discontinue our monitoring efforts.\(^\text{16}\)

Hugh De Kretser, executive officer of the Federation of Community Legal Centres, was also concerned about the new laws breaching the Victorian Charter of Human Rights and Responsibilities. He stated there were, ‘1300 people who are lawfully going about their business who’ve been searched [under] powers that the government has agreed breaches its own human rights charter’.\(^\text{17}\)

Associate Professor Julian Bondy from RMIT University, who co-authored a study on knife-carrying among young Victorians, expressed the view that knife crime is not solely an issue for the police to manage. He indicated that the increased police search powers and harsher penalties for knife carriage focused on the ‘end of the process’. He supported the United Kingdom’s approach to knife crime which utilises a multi-agency strategy involving police, ambulance services, general practitioners, schools and local councils.\(^\text{18}\)

The Control of Weapons Amendment Bill 2010 proposes to enhance some of the police powers to conduct searches without warrant particularly in unplanned designated areas.

3. The Bill

This section of the Research Brief outlines some of the key provisions in the Bill. For a more detailed explanation of the entire Bill, it is recommended the explanatory memorandum be consulted.

**Purposes**

Section 1 of the Bill states that its main purpose is to amend the *Control of Weapons Act 1990* (the Principal Act) for the following reasons:

(a) to provide for separate offences of selling a controlled weapon or a prohibited weapon to a child; and

(b) to provide for separate offences for a child to buy a controlled weapon or a prohibited weapon; and

(c) to allow infringement notices to be served for certain offences under that Act; and

(d) to make further provision in relation to-
   (i) exemptions granted by the Governor in Council, and approvals granted by the Chief Commissioner, in respect of prohibited weapons; and
   (ii) records and reports of searches; and
   (iii) planned and unplanned designations of search areas; and
   (iv) the application of search procedures to children, persons with impaired intellectual functioning and persons identifying as being of a particular gender; and

(e) to provide for the repeal of certain amendments relating to unplanned designations of search areas after 3 years.

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17 Vedelago (2010) op. cit.
Commencement
Section 2 specifies that the majority of the Bill’s provisions will commence on 1 July 2011.

Supply of Weapons to Children
A child is defined under s. 4 of the Bill as ‘a person under the age of 18 years’.

Section 5(2) of the Bill will make it an offence to sell a prohibited weapon to a child. A prohibited weapon is a more serious type of weapon (e.g. flick knives, daggers, knuckle dusters and swords). The penalty for this offence will be 240 penalty units or imprisonment for 2 years. It will also become an offence for a child to purchase a prohibited weapon. The penalty will be 25 units.

Under section 6 of the Bill it will become an offence for a child to purchase a controlled weapon (the penalty is 12 penalty units). A controlled weapon is a knife (other than a prohibited knife), spear gun, baton, bayonet or imitation firearm. It will also become an offence for a person to sell a controlled weapon to another person knowing that the other person is a child (the penalty 20 penalty units).

Exemption Provisions
Currently, the Governor in Council may provide an exemption from any provision of section 5 (prohibited weapons) or 8A (control of body armour) of the Act to a class of persons, class of prohibited weapons, corrections, military or police officer. Section 7(1) of the Bill will ensure that the Governor can not provide an exemption which allows the selling of a prohibited weapon to a child or the purchasing of a prohibited weapon by a child.

In addition, section 7(2) of the Bill clarifies that the Governor has discretion to apply conditions to exemptions. These include the ability to impose a waiting period (of up to 6 months) on a person or class of persons, to grant an exemption for a specified period only and to vary or revoke an exemption at any time.

Records of Searches
Under the current Act, police are required to keep written records of any search made under section 10 (searches without a warrant) or 10G (power to search persons in a designated area). Section 10(1) of the Bill will amend this requirement so that although records must still be kept for all searches under section 10, records will only be required for strip searches under clause 10G.

Reporting Requirements - Searches
Under the current Act, the Chief Commissioner must report to the Minister the number of searches conducted under section 10, and the number of strip searches conducted

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19 Control of Weapons Regulations 2000, schedule 2.
20 In his second reading speech, Minister Bob Cameron stated that the discrepancy in the penalties for selling a prohibited weapon to a child and for a child buying a prohibited weapon was designed to reflect the recognition of the vulnerability and youth of children. Victoria, Legislative Assembly (2010) op. cit., p. 2003.
21 Control of Weapons Act 1990, s. 3 & Control of Weapons Regulations 2000, schedule 3.
22 Clause 10 of the Principal Act specifies that ‘searches without warrant’ may occur when the police have reasonable grounds for suspecting that a person is carrying, or has in his or her possession, in a public place a weapon contrary to the Control of Weapons Act 1990. Clause 10G of the Principal Act specifies that the ‘power to search persons in a designated area’ provides that police, without a warrant, may stop and search a person, and search any thing in the possession of, or under the control of, the person for weapons, if the person and, if applicable, the thing are in a public place that is within a designated area.
under section 10G during the financial year. Section 11(1) of the Bill will extend these reporting requirements to include: the number of strip searches conducted under clause 10G in a ‘planned designated search area’; and, the number of strip searches conducted under clause 10G in an ‘unplanned designated search area’.

Under section 11(3) of the Bill, the Chief Commissioner will now be required to report the number of people who were charged with an offence pertaining to a weapon or dangerous article found during: all strip searches under clause 10G; strip searches in a ‘planned designated search area’; strip searches in an ‘unplanned designated search area’; and searches other than strip searches under clause 10G.

**Planned Designation of Search Areas**

Under subsection 10D(1) of the current Act, to declare a ‘planned designated search area’, the Chief Commissioner must be satisfied that:

(a) either –

(i) more than one incident of violence or disorder has occurred in that area in the previous 12 months that involved the use of weapons; or

(ii) an event is to be held in that area and incidents of violence or disorder involving the use of weapons have occurred at previous occasions of that event (wherever occurring); and

(b) there is a likelihood that the violence or disorder will recur.

Section 12(1) of the Bill seeks to clarify the meaning of ‘likelihood’ by inserting the following phrase:

For the avoidance of doubt, the Chief Commissioner may determine under subsection (1) that there is a likelihood that violence or disorder involving the use of weapons will recur even if that likelihood is less than more likely than not.

Explaining this clause, the Explanatory Memorandum stated that it was not the intention that the Chief Commissioner must be satisfied that the likelihood is greater than 50 per cent.23

Other amendments proposed in this section of the Bill are designed to cater for planned designated search areas for events, such as music festivals and sporting events, that may be held over an extended duration or over a number of consecutive days.

Under the current Act, the period of a declaration of a planned designated search area must not exceed 12 hours. Section 12(2) of the Bill proposes that declarations for events be exempted from these time period restrictions.

Further to this, subsection 12(3) of the Bill will specify that a declaration made in relation to an event may operate for more than one period and that each period of operation must be during that event. For example, if an event occurs between 10 a.m. and midnight over two consecutive days, the declaration must not operate before 10 a.m. on the first day, or between midnight and 10 a.m. on the second day; or after midnight on the second day.

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Unplanned Designation of Search Area
The amendments in section 13(1) of the Bill are designed to ensure that unplanned designations are not limited to urgent circumstances but may also be used where appropriate to conduct a random search for weapons, within a day or number of days.

Under section 10E of the current Act, the Chief Commissioner may declare an ‘unplanned designated search area’ if he or she is satisfied that:
(a) it is likely that violence or disorder involving weapons will occur in that area during the period of intended operation of the declaration; and
(b) it is necessary to designate the area for the purpose of enabling members of the police force to exercise search powers to prevent or deter the occurrence of any violence or disorder that the Chief Commissioner is satisfied is likely to occur.

Under section 13(1) of the Bill, these requirements will be broadened so that to declare an ‘unplanned designated search area’:
(a) the Chief Commissioner is satisfied that-
   (i) there is a likelihood that unlawful possession, carriage or use of weapons or violence or disorder involving weapons will occur in that area during the period of intended operation of the declaration; and
   (ii) it is necessary to designate the area for the purpose of enabling members of the police force to exercise search powers to prevent or deter the unlawful possession, carriage or use of weapons or violence or disorder involving weapons; or
(b) the Chief Commissioner is satisfied that-
   (i) more than one incident of unlawful possession, carriage or use of weapons or violence or disorder involving weapons has occurred in that area in the previous 12 months; and
   (ii) there is a likelihood that the unlawful possession, carriage or use of weapons or the violence or disorder involving weapons will recur.

Delegation by the Chief Commissioner
Under the current Act, the Chief Commissioner may delegate his powers to declare planned designated or unplanned designated search areas to a member of the police force of or above the rank of ‘inspector’. Section 14 of the Bill proposes that the rank of ‘inspector’ be changed to ‘Assistant Commissioner of Police’.24

Infringement Notices
Section 15 of the Bill will empower police to serve infringement notices for offences committed against sections 6(1), 6(1AA) or 6(1A) of the Act.25 The Bill specifies that infringement notices must not be served on a person under the age of 16 years at the time of the alleged offence.

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24 In his second reading speech, the Minister for Police and Emergency Services stated that this change in rank was due to the amendments to the powers to make planned and unplanned designations outlined in the Bill. Victoria, Legislative Assembly (2010) op. cit., p. 2004.
25 Section 6(1) of the Act prohibits a person from possessing, carrying or using a controlled weapon without lawful excuse. New section 6(1AA) prohibits a child from purchasing a controlled weapon. Section 6(1A) prohibits a person who is in licensed premises or in a public place that is in the immediate vicinity of licensed premises from possessing, carrying or using a controlled weapon without lawful excuse.
The infringement penalties proposed in the Bill are: for an offence under clause 6(1) - $1,000; for an offence under new clause 6(1AA) - 2 penalty units; and for an offence under clause 6(1A) - $2,000.

Transitional Arrangements
Section 16(1) of the Bill specifies that no class of persons or class of prohibited weapons exempted by the Governor in Council prior to the commencement of the new provisions relating to children (e.g. that the sale of a prohibited weapon to a child is illegal and that it is illegal for a child to purchase a prohibited weapon) is exempted from the prohibitions applicable under these provisions.

Section 16(3) of the Bill specifies that the new provisions relating to police powers to issue infringement notices will only apply to offences alleged to have been committed on or after the commencement of these provisions.

Conduct of Searches
Persons Who Identify as Members of a Particular Gender
Section 18 of the Bill proposes changes to the rules for strip searches in the Act to include specific references to people who identify as a member of a particular gender. For example, under the current Act, a strip search must be conducted by a person of the same sex as the person being searched. The Bill proposes to add an additional requirement that if the person being searched identifies as a member of a particular gender, the person conducting the search must be of that gender.

Children and Persons with Impaired Intellectual Functioning
Currently, all searches of children or persons with impaired intellectual functioning must be conducted either: in the presence of a parent or guardian; or in the presence of an independent person who is capable of expressing the wishes of the person being searched and, as far as practicable, is acceptable to the person.

In his second reading speech, the Minister for Police and Emergency Services stated that the requirement for an independent third party for these searches impacted upon the effectiveness of the search regime and community safety. He indicated that police report delays in locating independent third parties particularly in regional and rural areas.26

Thus, sections 19 and 20 of the Bill propose to differentiate the independent third party requirements for searches of children or persons with intellectual impairments depending on whether the search is a ‘planned designation search’ or other search. Under the changes proposed by the Bill, the third party requirements currently in place will only apply during searches being conducted as part of a planned designation.

For searches in other areas, the Bill proposes that, if practicable in the circumstances, the search be conducted in the presence of: a parent or guardian of the child or person being searched, or ‘if it is not practicable in the circumstances for a parent or guardian of the child [or person] to be present, any person (whether or not he or she is a member of the police force) other than a member of the police force who is conducting the search’.27

27 Control of Weapons Amendment Bill 2010, ss. 19(2) & 20(2).
Sunset Provision

Section 22 of the Bill is the sunset provision for the amendments in the Bill broadening the criteria for declaring unplanned designated areas. The Explanatory Memorandum states that the intention of the sunset provision is to allow a review of the effectiveness of these particular provisions to determine whether they are still necessary. According to section 2(3) of the Bill, the sunset provision will occur on the third anniversary of the day on which these particular amendments become operational.

4. Research on Knife Carriage Among Young People

This section of the research brief provides a brief overview of the prevalence and causes of knife carriage among young people. It also discusses the effectiveness of legislative strategies focused on supply of weapons (such as banning the sale of knives to children) on youth knife carriage.

The media has recently highlighted several instances of knife carriage among young people related to ‘youth knife crime’.28 As indicated by the Australian Institute of Criminology, there has been little academic research conducted in Australia on the carriage and use of knives.29 In addition, the validity of applying results from some international research to the local context has been challenged. For example, Bondy et al. argue that the applicability of American research, where prevalence of weapons carriage is high, is not necessarily generalisable to the Australian context where firearms are not as prevalent and young people experience a comparatively safe lifestyle.30

The Centre for Crime and Justice Studies, Kings College, London recently produced a report reviewing evidence and policy about ‘knife crime’ in the United Kingdom. The review drew upon various studies conducted on the topic in England, Scotland and Wales. With regard to knife carriage among youth, the review stated that insecurity and protection are the key motivators for knife carriage among young people, that young people who have been the victims of crime are more likely to carry knives, and that distinctions between victim and offender are often complex.31 For example, those who self-report ‘knife carrying’ are also more likely to have offended and been victims of crime.32 The report states:

[T]he very obvious correlation between children and young people who are exposed to violence and victimisation and the carrying of a knife indicates that, in light of feelings of threat and insecurity, the carrying of a blade might be considered far more understandable.33

The review concluded that trends in any form of violence, particularly knife crime, are related to underlying social and economic developments. Thus, these factors must be

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32 ibid., pp. 22 & 31.
33 ibid., p. 22.
considered in any strategy seeking to prevent increasing numbers of people becoming both the victims and perpetrators of knife-related violence.  

A study on youth knife carriage in Victoria was undertaken in 2001. Bondy et. al. employed a predominantly qualitative methodology to investigate the social context in which young people carry knives. Data was collected from 82 young Victorians aged between 10 and 25 years. Seventy-two of the participants were recruited through youth sector agencies in their local areas and participated via focus groups. The remaining ten participants were in custody at the time of the data collection and were interviewed individually. The research was also informed by a literature review of previous local and international research as well as a range of local crime, health and survey statistics.

The limitations of Bondy et. al’s research must be considered when interpreting the findings. A key limitation was the small sample size which makes the generalisability of the findings to other groups of young people uncertain. The research also used a self-report methodology which relies on the honesty of participants to report their experiences and perceptions of weapons carriage.

The findings revealed that the majority of young people included in the study did not carry weapons on a regular basis. Of the 72 young people who attended the focus groups, 15 per cent self-reported having ever carried a knife. However, this contrasted with the custodial sample, where nearly all of the participants (nine out of ten) had carried a weapon in the past.

Young people who carried weapons were more likely to be male, range in age from twelve to mid-twenties, come from a diverse range of cultural and linguistic backgrounds, and reside in urban areas. The authors also reported that knife carriage among youth tended to be transient with few participants in the study reporting that they carried weapons on a permanent basis.

The study found that the most common reason for carrying a weapon was self-protection. Other reasons included status enhancement and for aggressive and criminal purposes. However, the authors stated that knife carriage is often a ‘complex combination of defensive, aggressive and status-related motivations’. Participants in the study also reported a significant increase in levels of weapons carriage in the context of drug markets and violent crime.

In terms of accessibility, the majority of young people stated they had ready access to a wide variety of weapons (except firearms). Several participants indicated retail outlets such as camping and outdoor stores, pawn shops, army disposal stores and department stores were the most common sources for obtaining knives. A number of

34 ibid., p. 30.
35 ibid., pp. 13 & 20.
36 ibid., pp. 13 & 15.
37 ibid., pp. 19-20.
38 ibid., p. 79.
39 ibid., p. 112.
40 ibid., p. 114.
41 ibid.
42 ibid.
43 ibid.
44 ibid., pp. 84-85.
participants expressed that it was ‘too easy’ to obtain weapons and recommended that introducing tougher restrictions and licensing of buyers and retailers would be helpful.45

A more recent study was undertaken of youth weapon carriage in Sydney. In this study, Brown and Sutton surveyed two groups: young people without stable accommodation who used youth services (n=150); and school students in years 9 and 11 (n=184). Limitations of the study included the small sample sizes, and a very low response rate from school students (of 1,940 surveys distributed, only 184 were completed) raising the possibility of bias in the data.46

The results of this study suggested that carrying knives was associated with friends and family who also carry knives as well as for self-protection. In addition, the authors indicated that that ‘a surprising number of [participants] have been the objects of threats and assaults with knives/offensive weapons’.47 The study also found that for young people living with unstable accommodation, there seems to be a greater awareness of the possibility of violence in the community and a need to protect themselves at a greater level than in schools.48 In terms of the proportion of young people in the sample who carried knives, 57.5 per cent of young people in unstable accommodation reported carrying a knife within the last week compared with 35.7 per cent of school students.49

Evidence on the effectiveness of supply side strategies (such as restricting the availability of knives through legislation) for reducing knife carriage and use, suggest their effectiveness will be enhanced when used in combination with other strategies.

Brennan and Moore reviewed theories of weapon-related behaviour and motivations for weapon-carrying. They stated that, in countries with more restrictive gun laws, knives are a more prominent tool of violence. However, they found that the almost universal availability of kitchen knives significantly limits the usefulness of supply side approaches to knife crime. They indicated that even though laws in the UK limit the purchasing of knives to those eighteen years of age and over, and prohibit unlawful knife carriage, there are no laws to mandate the safe storage of knives.50

Similarly, a recent report on knife crime by the Home Affairs Committee in the UK House of Commons concluded that supply side initiatives in isolation were unlikely to significantly decrease violent crime. On this issue, the report concluded:

A huge factor in the decision to carry a knife or use it in an offence is its easy availability…While we believe there is value in exploring ways of decreasing supply, this is unlikely to reduce violent offending significantly. Those intent on committing violence will find other means.51

45 ibid., p. 103.
47 ibid., p. 57.
48 ibid.
49 ibid., p. 52.
Silvestri et al. undertook a review of international (English language) evidence about the efficacy of interventions targeted at reducing young people’s involvement in ‘gun’ or ‘knife’ crime. They found that interventions that are locally based, and combine both prevention and suppression approaches and have involvement from multiple agencies were more effective than single interventions by agencies working alone.\(^52\)

Bondy et al. expressed the view that reducing the supply of knives to young people would be helpful in limiting the number of illegal weapons suppliers who sell weapons which have no purpose other than to inflict harm.\(^53\) However, they also indicated:

> While the violent use of weapons represents the most extreme and visible tip of the youth weapon problem and requires a more immediate and coercive response, the possession of weapons is more appropriately addressed through education and support based early intervention initiatives, which focus on the underlying motivations and risk factors that influence young people to carry weapons in the first place.\(^54\)

The Australian Institute of Criminology stated that further research is required to assess the effectiveness of legislative reforms that seek to reduce the acquisition and carriage of knives.\(^55\)

### 5. Other Jurisdictions

This section provides a brief overview of other jurisdictions with a focus on three key points of comparison: the sale and purchase of prohibited and controlled weapons, the possession of weapons in public, and the powers of authorities to search for weapons in public places without a warrant. The jurisdictions covered include New South Wales, Queensland, South Australia and the United Kingdom.

#### New South Wales

The **Weapons Prohibition Act 1998** (NSW) prohibits the sale or purchase of prohibited weapons, as outlined in Schedule 1\(^56\) of the Act, unless both the buyer and the seller are authorised to do so by a permit\(^57\) (s. 23).\(^58\) It is also an offence under section 7 to be in possession of or use a prohibited weapon without a permit, or to use a prohibited weapon in contravention of the conditions of a permit.\(^59\) The sale of any knife, other than a plastic knife used for eating, to a child under 16 is prohibited under section 11F of the **Summary Offences Act 1988** (NSW).\(^60\)

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53 ibid., p. 133.
54 Bondy et. al. (2005) op. cit., pp. 127-8.
55 AIC (2009) op. cit.
56 Schedule 1 contains many of the weapons classified as prohibited weapons in Victoria, such as: flick knives, hunting knives and other bladed weapons; martial arts weapons such as nunchaku; replica weapons; and miscellaneous articles such as body armour, handcuffs and silencers.
58 The maximum penalty is 50 penalty units or imprisonment for 12 months, or both, for a summary conviction. A conviction on indictment carries a maximum of 5 years imprisonment.
59 The maximum penalty is 100 penalty units or imprisonment for 2 years, or both, for a summary conviction, and 14 years imprisonment for a conviction on indictment.
60 The maximum penalty is 50 penalty units. If an employee breaches this section, the employer is taken to have contravened the section.
The Summary Offences Act 1988 (NSW) contains further provisions pertaining to the equivalent of prohibited weapons in Victoria. It is an offence under section 11B to carry an offensive implement in a public place or a school. An offensive implement is defined as anything made or adapted for use for causing injury to a person, or anything intended to be used to injure or menace a person or damage property. A more specific offence is outlined in section 11C under which it is an offence to carry a knife in a public place or a school, and 11E under which it is an offence to wield a knife in a threatening way in public or in a school. A parent is in breach of section 11D if they knowingly allow a child under the age of 18 to carry a knife in contravention of section 11C. Sections 11B, 11C, and 11E do not apply if the person has a reasonable excuse for carrying the offensive implement, proof of which lies with the person carrying the implement. Self defence is specifically excluded as a reasonable excuse.

Part 4 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) contains police powers of search and seizure without warrant. General search and seizure powers are outlined in sections 20 to 24. However, additional powers of search and seizure in public places and schools are contained in sections 25 to 28. These sections allow police to stop and frisk search a person in public or a student at a school, if there are reasonable grounds for suspecting the person has a dangerous implement in his or her custody. When determining ‘reasonable grounds’, the fact that the person is located in an area with a high incidence of crime can be taken into account. The police may also search a student’s bag, locker and personal effects contained in the locker. Section 26(4) provides for a student to nominate an adult who is on the school premises to be present during the search.

Queensland
In Queensland the Weapons Act 1990 (Qld) is the principle piece of legislation for the control of weapons. For the purposes of the Act, the Weapons Categories Regulation 1997 (Qld) divides weapons into eight categories with a further category for restricted items. All of the categories pertain to firearms or firearm accessories (such as bullet proof vests and silencers), except the following:

- Category M weapons – weapons that are not firearms (the equivalent of prohibited weapons in Victoria);
- Restricted items – restraints, nunchaku, batons and studded gloves.

Sections 35 and 36 of the Act prohibit the acquisition, sale and disposal of weapons without the required permit. Under section 39(2) a permit can be obtained for acquiring a category M weapon providing the person is an adult and has a demonstrable need to possess the weapon. It is unlawful to possess a weapon without

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61 The maximum penalty is 50 penalty units or imprisonment for 2 years, or both, and the offensive implement may be forfeited to the Crown upon conviction.
62 For s. 11C the maximum penalty is 20 penalty units or 2 years imprisonment, or both. For s. 11E the maximum penalty is 50 penalty units or 2 years imprisonment, or both.
63 The maximum penalty is 5 penalty units.
64 A general power to conduct strip searches is listed under section 31 if the ‘seriousness or urgency’ of the situation requires it and the person is aged 10 years or over. Children under 18 years of age or persons with a mental impairment must have a parent or guardian present during the search, if it is reasonably practicable to do so (ss. 31-34).
65 For acquiring a category M weapon (the equivalent of prohibited weapons in Victoria) the maximum penalty is 20 penalty units or 6 months imprisonment. The same penalty applies for the sale of a category M crossbow without the appropriate permit. No penalty is listed for ‘selling’ the other category M weapons. However, the unlawful ‘supply’ of these weapons is prohibited under section 50B of the Act.
a permit (s. 50) and also to supply a weapon without a permit (50B). However, a separate offence is listed under section 51 for possessing a knife in a public place or a school without a reasonable excuse for doing so. As with most other jurisdictions, self defence does not constitute a reasonable excuse. Possessing or acquiring a restricted item is prohibited under section 67 of the Act. Section 15(1c) of the Summary Offences Act 2005 (Qld) also prohibits a person from carrying an implement that is being, or is to be, used to unlawfully injure a person.

If the police reasonably suspect that a person is carrying a knife (s. 30ai) that they may not lawfully possess, then the person may be stopped and searched under section 29(1) of the Police Powers and Responsibilities Act 2000 (Qld). Any unlawful items found during a search under 29(1) may be seized by police under 29(2).

South Australia
Section 15(1) of the Summary Offences Act 1953 (SA) prohibits a person from carrying an offensive weapon, which includes: rifles, guns, pistols, swords, knives, clubs, bludgeons, truncheons or other offensive or lethal weapons. A further offence is outlined in section 15(1b) pertaining to the possession, manufacture, sale, distribution, supply or other dealing with ‘dangerous articles’, which includes: bayonets, blowguns, catapults, crossbows, dart projectors, noxious sprays and gas injection devices. It is also an offence under section 15(1ba) to carry an offensive weapon or a dangerous article at night in the vicinity of a licensed premise. Section 15(1c) prohibits the possession, manufacture, sale, distribution, supply or other dealing in ‘prohibited weapons’, which includes: various knives, catapults, various chemical agents, batons, hand or foot claws, knuckle dusters, laser pointers and nunchakus. A list of exceptions to these prohibitions, generally relating to ‘reasonable excuses’, are listed in the Act.

Police can currently stop, search and detain any person who is reasonably suspected of carrying a weapon under section 68 of the Summary Offences Act 1953 (SA). However, the Attorney-General’s Department has conducted a review focusing on the control of knives and police search powers, and several significant changes were recommended, including:

- Banning the sale of knives to minors under the age of 16 years;
- Preventing the supply of knives to a person who is likely to use it for a serious offence;
- Allowing police to use metal detectors in or around licensed venues to search for knives and other weapons, followed by a more formal search;

66 The maximum penalty for unlawfully possessing a category M weapon is 100 penalty units or 2 years imprisonment. For unlawfully supplying a category M weapon the maximum penalty is 200 penalty units or 4 years imprisonment.
67 The maximum penalty is 20 penalty units or 6 months imprisonment.
68 The penalty for possessing a restricted item is 10 penalty units.
69 The maximum penalty is 10 penalty units or 1 year imprisonment.
70 Police also have a general power to remove clothing during any lawful search under section 629. Safeguards for children and persons with an impaired capacity are contained in section 631.
71 The maximum penalty is $2,500 or imprisonment for 6 months.
72 The maximum penalty is $7,500 or imprisonment for 18 months.
73 The maximum penalty is $10,000 or imprisonment for 2 years.
74 The maximum penalty is $10,000 or imprisonment for 2 years.
- Allowing police to exercise special search powers in designated areas.  

A draft Bill was released with a new section 15AA titled ‘special provision relating to knives’, which includes a penalty of $20,000 for selling a knife to person under the age of 16 years. However, the Bill is yet to come before the Parliament of South Australia.

**United Kingdom**

In the United Kingdom the use of knives as weapons has been a particular problem and several pieces of legislation have been introduced to address different issues. The *Knives Act 1997* (UK) prohibits the marketing of a knife in such a way which ‘indicates or suggests that it is suitable for combat’, or ‘is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon’. Section 141 of the *Criminal Justice Act 1988* (UK) prohibits the manufacture, sale, or hiring of an offensive weapon. Offensive weapons are set out in the *Criminal Justice Act 1988 (Offensive Weapons) Order 1988* (UK), and include weapons that are comparable to prohibited weapons in Victoria. Section 141A of the *Criminal Justice Act 1988* (UK) prohibits selling to a person under the age of 18 any knife, blade, razor, axe, sword or any other item which has a blade and is adapted to cause injury to a person. Knives that are used for domestic purposes can only be sold to persons aged 16 years and over.

A general prohibition on carrying offensive weapons in public is contained in section 1(1) of the *Prevention of Crime Act 1953* (UK). Section 139 of the *Criminal Justice Act 1988* (UK) specifically prohibits a person from carrying an article with a blade or point in a public place. Small pocket knives with a blade not exceeding three inches are not included. Reasonable excuses for carrying a blade in public are set out in section 139(5) and include: for use at work, for religious reasons, or as part of any national costume. Stricter penalties apply under section 139A if the offence is on school premises, or if the item is on a school premises and is also an offensive weapon.

The police are authorised to search any person without warrant and seize unlawful weapons under several different Acts. Under section 139B of the *Criminal Justice Act 1988* (UK) a constable may enter school premises and search those premises and any person on those premises for knives or offensive weapons if there are reasonable grounds for doing so. Section 60 of the *Criminal Justice and Public Order Act 1994* (UK) allows the police to designate an area where there is a reasonable suspicion that people are carrying weapons. Police are able to stop and search any pedestrian or vehicle for offensive weapons within the designated area, with or without a suspicion

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76 ibid.

77 The maximum penalty for this offence is six months or a fine, or both, for a summary conviction. For a conviction on indictment a person may be imprisoned for a term not exceeding two years, or a fine, or both.

78 The maximum penalty on summary conviction is six month imprisonment or a fine, or both.

79 The maximum penalty is six months imprisonment or a fine, or both, for a summary conviction. For a conviction on indictment the maximum penalty is 4 years or a fine, or both.

80 The maximum penalty is six months imprisonment or a fine, or both, for a summary conviction. For a conviction on indictment the maximum penalty is imprisonment for 2 years, a fine, or both.

81 The maximum penalty on summary conviction is 6 months imprisonment or a fine, or both. For a conviction on indictment the maximum penalty is two years imprisonment or a fine, or both. For an offensive weapon on school premises the maximum penalty is six months or a fine, or both, for a summary conviction. For a conviction on indictment the maximum penalty is 4 years imprisonment or a fine, or both.
that the person indeed has a weapon. If police believe it is ‘expedient’ to do so, searching in the designated area may be extended for a further 24 hours. Any person searched under this section is entitled to obtain a written statement from police that they were searched. More general stop and search powers are also contained in Part 1 of the *Police and Criminal Evidence Act 1984* (UK), which specify that ‘any person’ may be stopped and searched for prohibited items.
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