

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Vaping and Tobacco Controls

Melbourne – Monday 29 April 2024

MEMBERS

Sarah Connolly – Chair

Nicholas McGowan – Deputy Chair

Michael Galea

Mathew Hilakari

Lauren Kathage

Bev McArthur

Danny O'Brien

Aiv Puglielli

Meng Heang Tak

WITNESS

Cressida Wall, Commissioner, Better Regulation Victoria.

The CHAIR: I declare open this hearing of the Public Accounts and Estimates Committee. I ask that mobile telephones please be turned to silent.

I begin by acknowledging the traditional Aboriginal owners of the land on which we are meeting. We pay our respects to them and their elders past, present and emerging as well as elders from other communities who may be here with us today.

On behalf of the Parliament the committee is conducting this Inquiry into Vaping and Tobacco Controls. I advise that all evidence taken by the committee is protected by parliamentary privilege. However, comments repeated outside of this hearing may not be protected by this privilege. Witnesses will be provided with a proof version of the transcript to check, and verified transcripts, presentations and handouts will be placed on the committee's website.

I welcome the Commissioner for Better Regulation Victoria, Cressida Wall. I am going to invite you to make an opening statement or presentation of no more than 5 minutes, and then committee members will have questions. Over to you.

Cressida WALL: Thank you, Chair, and thank you to the committee for inviting me here today. I would also like to acknowledge the traditional First Nations owners of the lands on which we meet today and pay my respects to elders past and present.

By a letter dated 4 October 2021 the then Minister for Regulatory Reform, the Honourable Danny Pearson, requested that the Commissioner for Better Regulation prepare a report with the following terms of reference:

- (1) the current regulatory environment for tobacco in Victoria, with a focus on regulation of illicit tobacco;
 - this includes the licensing, compliance and regulatory powers relevant to sales of all tobacco
- (2) the regulatory frameworks applying in other relevant jurisdictions;
- (3) recommendations for improvement, having regard to the nature of illicit tobacco sales and the parties involved;
- (4) possible pathways to implement these recommendations, including whether new legislation and/or regulation is required;
- (5) the costs and benefits of the preferred approach; and
- (6) funding considerations including possible sources of funds that may be available to assist regulation of tobacco production and sales.

The minister requested the report within six months of the receipt of the letter and indicated that publication of the report would be at the discretion of the Minister for Regulatory Reform and the Minister for Health. Between October 2021 and May 2022 the then Commissioner for Better Regulation Anna Cronin conducted the review, which included a broad range of stakeholder consultation both in person and via written submissions.

By letters dated 20 May 2022 the then Commissioner for Better Regulation provided the report to the then Minister for Regulatory Reform and the then Minister for Health, the Honourable Martin Foley. The report contained six recommendations, which I will summarise and are further detailed in the report.

1. That the Victorian Government introduce a licensing scheme for sellers of tobacco products and e-cigarettes, including both retailers and wholesalers.
2. The licensing scheme should be administered by a state government body, such as the Department of Justice and Community Safety (possibly with enforcement undertaken by that department or organisation within that department, in collaboration with Victoria Police and Commonwealth agencies).
3. A full suite of investigative powers should be provided to officers/inspectors authorised by the state regulator and to Victoria Police.

BRV also recommended the establishment of a statutory advisory committee comprising representatives from other relevant state agencies ... health advisory bodies and industry.

4. That the Tobacco Act 1987 and other relevant legislation be amended to provide for a significantly stronger penalty regime for unlicensed sale of tobacco products and for illicit sale of tobacco.

5. The Government should invest in education about the new licensing scheme and other reforms and explain how illicit tobacco often funds organised crime and undermines public health measures.

The Government should also continue to support programs to reduce the use of tobacco products by vulnerable persons and communities ...

6. That the Victorian Government continues to collaborate with the Commonwealth to finalise the National Tobacco Strategy which should provide nationally coordinated approaches to illicit tobacco trading. This should include:
 - national laws;
 - the establishment of a Commonwealth body;
 - funding ...from customs and excise revenue to support education ...and nationally consistent licencing schemes so that licensing fees ... can be kept to a minimum; and
 - continued participation in cross jurisdictional engagement on tobacco control enforcement and compliance.

On 16 May 2023 the Premier announced that the VBA had appointed Anna Cronin as the Chief Executive Officer of the Victorian Building Authority and on or around 14 June 2023 Ms Cronin was formally appointed to the role and ceased being Commissioner for Better Regulation. Rebecca Billings served as interim Commissioner for Better Regulation between Ms Cronin's departure and my appointment as Commissioner for Economic Growth and Better Regulation, which commenced on 1 January 2024. I hope to help the committee today but in some respects I was not involved with this original report, so it is more challenging.

I understand that the Assistant Treasurer has now provided the BRV report to the committee, and I welcome questions from the committee in relation to the BRV report.

The CHAIR: Thank you, Ms Wall. We will go straight to Mr O'Brien.

Danny O'BRIEN: I have a question for the Chair first. Have we got that report? I did not think it was publicly available.

The CHAIR: We do. It has just come through.

Danny O'BRIEN: It has come through, right.

The CHAIR: It has just come through now.

Cressida WALL: We have just emailed it you now.

Danny O'BRIEN: Okay. That is fine. Because that was going to be my first question: where is it and why haven't we seen it? So it has been publicly released now?

Cressida WALL: I do not know whether it has been publicly released. I am aware that the Assistant Treasurer provided it by email to the committee.

The CHAIR: I think it is up on the website now.

Danny O'BRIEN: Ours or Better Regulation Victoria? Sorry, I am not meant to be asking the Chair questions.

The CHAIR: No, it is all right. Let me have a check.

Danny O'BRIEN: That is fine. I guess on the substance of that report, is the matter of licensing going to be a simple, straightforward solution to better regulating illicit tobacco and vaping sales?

Cressida WALL: Well, the report had six recommendations so it certainly recommended a range of activities, of which licensing was one. The recommendations covered licensing, regulatory oversight through a state government body, enhancing investigation and enforcement powers and providing for increased deterrents and stronger penalties as well as education and support and that important element of cooperating with the Commonwealth as well. So there were a number of elements to what the report recommended.

Danny O'BRIEN: Are you able to give any insight on that issue of the Commonwealth? It has always perplexed me, particularly from an illicit tobacco perspective, that the ATO does not take more action to crack down on this. What has BRV's experience been of working with the Commonwealth?

Cressida WALL: It is a good question. The Commonwealth's behaviour was not an explicit part of the terms of reference of the inquiry, so it was not something that we went into a great detail on. But we did consult with a range of people, and I suppose one of our recommendations in relation to licensing touches on the Commonwealth's role, because it looks at the whole chain of activity around illicit tobacco. One of the elements that would help to support tracing that chain is a licensing system so we can tell what is legal and what is not.

Danny O'BRIEN: What has BRV recommended in terms of the structure of a licensing system? Is it to be modelled on what happens with liquor licensing? Does it need to be a whole new system? How would it likely work?

Cressida WALL: That is covered extensively in the report, so I would love to give you some information about the characteristics of what BRV would consider to be an effective licensing system – what the features are. Certainly the features that were highlighted in the report were: that there should be required a separate licence for each retail premises and each wholesale business premises; that it should prohibit the sale of tobacco products or e-cigarettes via online or telephone orders – having ordered tobacco products or e-cigarettes with meals or groceries or having products delivered via transport or post; that it should require body corporate licence-holders to nominate one or more directors or other natural persons to be responsible for compliance; and that it should provide for applicants to meet a fit and proper person test, which would include a provision for refusal of applications where an applicant did not meet the criteria or where the applicant had committed relevant offences such as breaches of the Act or Commonwealth customs and excise laws or had been refused or had cancelled a relevant licence, such as a liquor licence, previously.

It was also suggested in the report that the licensing system should provide for licensed persons to have their licence suspended or cancelled where they or an associate commit further acts of breach; that licensed retailers should only be permitted to purchase from licensed wholesalers; that licensed retailers should be displaying their licence as you would in other licence situations; that they have to ensure that people within the licensed premises have conducted relevant training on actual responsible sale of tobacco products; and that they report on sales periodically, as required by the regulator. One of the elements of the report was this idea that data in this area is quite difficult to come by and so the reporting of it would help to create a more coherent approach. One of the other things that the report touched on in some detail was this idea that the administrative burden associated with the licensing system should be kept as low as it could be.

Danny O'BRIEN: Yes. What is BVR's role now – anything? Or will it be completely implemented by justice?

Cressida WALL: We do not have an ongoing role in relation to this work.

Danny O'BRIEN: Okay. Have you made recommendations as far as enforcement goes? Because it is one thing to have the licensing scheme; we know that, clearly, organised crime is involved in the illegal tobacco trade in particular. How do we make sure that we do not just add red-tape burden to people who are doing the right thing and the criminals continue on without being touched by enforcement?

Cressida WALL: The review's terms of reference asked BRV to focus on the regulatory system rather than enforcement matters, but the report did make some observations about enforcement. In terms of reducing access to illicit tobacco, the report concluded that the following powers should be included, subject to a human rights assessment process, so there should be enhanced powers – things like the power to enter premises for compliance monitoring without consent from the owner or occupier; the power to seize tobacco products, equipment and documents involved in the alleged commission of offences; the power to inspect and make copies or take extracts of documents; the power to immediately cancel a licence; the power to issue on-the-spot fines; coercive powers to require the production of documents; the power to prescribe that if there is more tobacco on the premises than is reasonably required for the use of persons residing on the premises, that would be deemed to be evidence for the sale of tobacco by the occupier; and also search warrant powers. So there were a number of recommendations in relation to enhancing enforcement.

Danny O'BRIEN: Do you know: has the government accepted those recommendations as yet?

Cressida WALL: I do not know.

Danny O'BRIEN: Okay. This is probably a question for the next witness, but does BRV recommend any additional resources to police in particular, or to whatever agencies, to be enforcing these rules?

Cressida WALL: I do not think that the report touched on an evaluation of that.

Danny O'BRIEN: Sorry, Chair, just one more. I am at a little bit of a disadvantage, not having been able to read the report. What is the intention of how it will be managed? As in, will it be police doing enforcement? At the moment local councils have a role and the health department does. Do you know who will actually run this and ensure it is enforced?

Cressida WALL: The report recommended that a full suite of investigative powers should be provided to officers and inspectors of the state regulator as well as police.

Danny O'BRIEN: But who is the state regulator?

Cressida WALL: Well, when it is established – when the government makes a decision about who would do it.

Danny O'BRIEN: So that decision has not been made as yet?

Cressida WALL: Not that I am aware of.

Danny O'BRIEN: No worries. Thank you, Chair.

The CHAIR: Thank you, Mr O'Brien. Mr Hilakari.

Mathew HILAKARI: Thank you. As you are aware, most of the regulation occurs at the local council level at the moment, and this report calls for police to have a much greater role. Do you want to just talk us through some of why that is recommended?

Cressida WALL: Absolutely. I will just refer to my notes.

Mathew HILAKARI: And maybe 'Why not councils?' as well.

Cressida WALL: Yes. One of the observations that was made in the report is that enforcement of tobacco laws is quite challenging. The majority of enforcement is carried out by local council environmental health officers. Those officers often do not have the skills and support and to some extent the report found they did not have the powers to investigate offences involving people and businesses with links to organised crime gangs. During its work, BRV also heard that where actions have been taken the penalties imposed have not deterred offenders due to their relative insignificance compared to the significant profits that can be made from the illicit tobacco trade. So regulating illicit tobacco is very complicated, and it involves local, state and federal agencies across a range of law enforcement bodies, including border security, the Australian Tax Office, health departments and agencies, fair trading and local council. Coordination and collaboration and clarity of responsibilities and clear referral structures across those agencies are lacking and yet essential for enforcement and compliance. Those are some of the challenges and how that interacts with that local government environment and with police.

Mathew HILAKARI: And in other jurisdictions have we seen that move to police having greater involvement and a statewide regulator as opposed to local councils? That might be beyond the scope of the report.

Cressida WALL: In other jurisdictions enforcement is generally also done by state or territory government officers, so sometimes by regulators. In some cases local council officers undertake enforcement in relation to nonsmoking areas, but this is in contrast to Victoria, where almost all of the tobacco control enforcement work is undertaken by local council EHOs, so it is a bit different.

Mathew HILAKARI: You have talked a little bit about stronger penalties. What are the sorts of penalties or the level of penalties that you think will really turn the dial on this, or have you got experience or seen this in other jurisdictions or other regimes than Victoria? What are the sorts of recommendations that you look to?

Cressida WALL: I am aware that the report makes reference to the current penalties –

Mathew HILAKARI: That is right.

Cressida WALL: which are over \$40,000 for individuals and over \$200,000 for companies. I am sorry, I am not sufficiently across that level of detail, but I think that in the report it actually provides a comparison of the regulation – in the back part of the report – that would be useful I think to the committee, where it compares each of the jurisdictions.

Mathew HILAKARI: Sure. Maybe, in your experience, what is a level that gives a sufficient disincentive to be involved in this activity?

Cressida WALL: I think it really depends on the circumstances. The report did not define a particular individual penalty, so it would have to be a comprehensive sort of what is fit for any particular breach, I suppose.

Mathew HILAKARI: You talked a moment ago about some of the fundamental elements of licensing, particularly a separate licence for each premises. Do you want to just talk about why that would be required or why that is best practice?

Cressida WALL: I think that providing separate licences enables the individual carriage of particular tobacco to be tracked from start to finish. If it were aggregated, you could not necessarily get that chain of command as effectively, but again it would depend on the way that the system was actually regulated.

Mathew HILAKARI: No worries. Just a final one, we talked initially in this report about a justice versus health approach. I am just hoping you can comment on why you think a justice approach more so, and I wonder if there is maybe a bit of consideration around the health approach being on the demand side as opposed to the supply side.

Cressida WALL: Just give me a moment.

Mathew HILAKARI: The reference is about the federal – the Commonwealth Parliament's – report as well.

Cressida WALL: Yes. Just a moment. It was certainly an issue that came up during the report, but I might have to take the member's question on notice on that one.

Mathew HILAKARI: No worries. Thank you.

Cressida WALL: Thank you.

Mathew HILAKARI: Thanks.

The CHAIR: Thanks, Mr Hilakari. Ms McArthur.

Bev McARTHUR: Thank you very much. Why should local council be involved in the regulation? Isn't that just cost shifting?

Cressida WALL: Well, the report recommends that the regulator would take more of that role. What the report says about local council – I will just find the reference for you – is that:

The role of council officers should be limited to:

- partnering with the state regulator and police to share intelligence;
- assisting with enforcement related to no smoking areas; and
- if requested by the state government regulator, supporting compliance with the Tobacco Act by licensed tobacco retailers and wholesalers.

Bev McARTHUR: You said, though, that in many instances local government do not have the skill set to be able to handle this enforcement. Why shouldn't the regulator and the police actually just be totally responsible for regulating this area of activity?

Cressida WALL: When I made that reference I was referring to the current situation rather than what was recommended in the report. I think that council officers would continue to have a role in partnering with the state regulator, but the role would probably change over time.

Bev McARTHUR: What, for them being more involved or less involved?

Cressida WALL: Well, the report talks about the local council partnering with the state regulator. Under the framework that was recommended by the report it would seem likely that their role might reduce over time as the regulator took more of a role, but ultimately that would be a matter for the licensing scheme.

Bev McARTHUR: Yes. So that will remove local councils from being part of the state regulatory system.

Cressida WALL: That is not what the report said. The report said that local council would still have a role in partnering with the regulator and assisting with enforcement relating to no-smoking areas and supporting compliance with the *Tobacco Act* by licensed tobacco retailers and wholesalers. The report did not make a recommendation in the terms that you are describing. It was about enhancing the total framework.

Bev McARTHUR: Local government is already burdened by much cost shifting from state government, and ratepayers are continually having to wear the cost of state government policy. Wouldn't a better approach be to get local government out of this regulatory area altogether?

Cressida WALL: I can really only go back to the report. The report suggested that there would continue to be some role for local governments because they are on the ground and that they could play a partnership role with the regulator.

Bev McARTHUR: At the moment all the regulations and licences in the world do not seem to make the slightest swat of difference to people who want to bring in illicit tobacco or vaping products. How do you envisage new regulations being able to solve the organised crime problem within this area?

Cressida WALL: While it is not possible to prevent criminal activity through the existence of legislation or licensing, on balance the report takes the view that licensing supports a number of important elements. If Victoria were to implement a licensing scheme for retailers and wholesalers in combination with the Commonwealth's importation licence, the majority of operators along the tobacco supply chain could be linked, and legal or illegal provenance could be proven – one of the challenges at the moment is that proof. By registering retailers and wholesalers and requiring retailers to purchase tobacco from registered wholesalers, there will be greater transparency over the supply chain. A licensing system could also make it easier to secure convictions for tobacco-related offences. When combined with tougher penalties and more enforcement powers, the framework could increase the removal of criminals from the system in a way that enforcement with the existing scheme could not currently do. If licensees were required to declare annually their sales figures to the state regulator, the information could be matched to provide data and improve intelligence about the tobacco market. Some other jurisdictions collect this type of data.

Bev McARTHUR: Collecting data is one thing, catching criminals is another, I imagine. If you ban a product and make it illegal, don't you just actually create a black market? Isn't it better to not have, for instance, vaping banned but have it legal?

Cressida WALL: The licensing system that was recommended could take many different forms. The existence of a licensing system was considered to be a good step forward.

Bev McARTHUR: So the licensing system will certainly encompass the honest broker, but while you have a product banned or you have a cost inflation of another product – i.e., cigarettes with taxes – won't you just always increase the ability for criminals to find a market?

Cressida WALL: I do not think that any system can prevent criminal activity entirely. But having heard all of the submissions, on balance it was considered that this would be the best system to reduce harm – or a

system with some of these features, I am sorry. I am not trying to say that mine is the best system. But a system with some of these features would be an improvement and bring us into line with other jurisdictions.

Bev McARTHUR: How much will this regulatory system cost an honest broker trying to sell cigarettes? They cannot sell vaping products yet, can they? They are illegal.

Cressida WALL: The report did touch on the licensing fees. It said ideally licence fees should be set to recover the costs of administering the scheme and try to limit the financial burden on businesses and try to impose no additional burden on Victorian taxpayers individually. There were a few submissions about individual licensing fees and what people thought that they should be. Feedback from various stakeholder groups suggested annual licensing fees should fall between \$250 and \$500 for retailers and indirect sellers and between \$700 and \$1500 for wholesalers and specialist tobacconists. Using these fees and the 2014 estimate of the number of retailers as a guide, annual revenue from retailers could be \$2 million to \$4 million. It was considered that there were a range of different ways that they could be done. It may be of interest that also in a submission from Ritchies IGA and a joint submission from the AACS and MGA that an appropriate annual fee would be one in alignment with Western Australia's, which is around \$305 per year, which is for retailers and indirect sellers, and \$735 per year for wholesalers. South Australia's is \$309 for retailers, and the Northern Territory's is \$248 per year for retailers. The report goes through a number of those figures that may be of assistance to the committee in contemplating those fees and what might be appropriate.

Bev McARTHUR: How much does it cost to run your agency?

Cressida WALL: That is a good question. I do not have those figures with me, but I understand they are available in the budget papers.

Bev McARTHUR: Could you take that on notice?

Cressida WALL: Absolutely.

Bev McARTHUR: Thank you. No further questions, Chair.

The CHAIR: Thanks, Mrs McArthur. Ms Kathage.

Lauren KATHAGE: Thank you, Chair. Thank you so much for joining us.

Bev McARTHUR: I have not got a smoker's cough, by the way.

Lauren KATHAGE: I just wanted to ask about – I guess, zooming out a little bit to the international scene and best practice internationally. I mean, Australia has been a signatory to the WHO convention for a little over 20 years, so how do we sit internationally in terms of the regulatory approach to tobacco?

Cressida WALL: That is a good question. There is a reference in the report. I am just trying to find it. There is a reference in the report to licensing being an important part of administering this sort of scheme, in terms of international examples, but I will have to take that on notice.

Lauren KATHAGE: Sure. In the development of your report, did you look to any particular countries internationally that seem to be having an effective approach to tobacco control?

Cressida WALL: We looked across Australia, and I understand that the commission did look at some international practice, but I will have to take that on notice.

Lauren KATHAGE: Sure. Within Victoria we have heard a little bit about the regional differences for tobacco growing, selling et cetera and the difference between the north and the south of Victoria. Within the development of your report and your recommendations, did you consider how different parts of Victoria might be impacted by your recommendations or supported by your recommendations?

Cressida WALL: We did hear from a range of stakeholders, and I am sure that that is a consideration that is important for the committee. The recommendations did not touch on the regional differences, and so I cannot add anything to that.

Lauren KATHAGE: Sure. Thank you. The lack of data, because of the illegality of some of the activities, posed a bit of a challenge in the development of the report and getting a clear picture. If we did have more data through licensing, what uses do you see that data could serve?

Cressida WALL: Well, I think that it would help to understand the scale of the challenges. For example, if a sort of chain of ownership is established on the import side and we know how much is being sold through licensed operators, we can see where there have been leaks in the pipe, particularly when that is combined with national data. At the moment that sort of inquiry is not possible. I think that also understanding the scale of the problem helps to consider the relevant health and safety responses and enforcement activities.

Lauren KATHAGE: Thank you. There was discussion earlier about whether a criminal or a health approach is the most appropriate for our jurisdiction. I just wondered then, with your recommendations, how that would intersect with the functions of the new Victorian health regulator and their work in practice.

Cressida WALL: The report did not go into that, so it really would be outside of the research that was done on the report to comment on that.

Lauren KATHAGE: Do you have any views or insights into what you think might be the most appropriate

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Cressida WALL: There is nothing I could add that would be helpful to the committee.

Lauren KATHAGE: There is also a focus in the recommendations on providing clarity of roles and referral processes et cetera between different agencies at the local, state and federal levels. What actual impact would you see that having on the ground, or what are some examples of how that might work in practice? What sort of information needs to be shared, or what are suggestions for how that might best be done?

Cressida WALL: One of the suggestions in the recommendations was that there should be an advisory body which drew from different parts of government. Recommendation 2 recommended that there be representatives from health advisory bodies and industry, and it would include other parts of government or the people that are involved in this chain. If you look at some areas across government where that has occurred, you can get a more rounded view of what is happening and also make sure that there is a consistency of approach. That is what is envisaged through that sort of collaboration.

Lauren KATHAGE: Thank you. The report makes clear that there are all those different levels involved in the control of tobacco. Reflecting also Mrs McArthur's concerns about the costs borne by local government, your report recommends that the federal government provide more funding support for enforcement and control of tobacco. Can you speak a little bit to that?

Cressida WALL: I cannot take it beyond what is in the report. I think the report certainly touches repeatedly on the idea that this should be a collaborative approach and that the state should participate actively in advocating to and with the Commonwealth to reach a coherent response under the national tobacco strategy.

Lauren KATHAGE: In terms then of the control of online sales, what does BRV see as the most appropriate response for the Victorian government to control online sales of illegal products?

Cressida WALL: The report said that there is a high likelihood that illicit tobacco is being purchased online from sellers both within and outside of Victoria or Australia. Concerns have also been raised about the increased risk of sales to minors via online purchasing, although this risk would apply to the sale of legal and illicit tobacco. The report indicated that the government should consider adopting a similar approach to South Australia by prohibiting online sales altogether. There appears to be little benefit to Victorian communities in making tobacco products available through online sales. By prohibiting this practice altogether, it would mean any person caught selling tobacco or e-cigarette products online for delivery by transport or by post would be committing an offence. In reaching this view BRV is mindful of the difficulties in identifying the entities selling the illicit products via websites and of enforcing offences against persons based outside of Victoria. This will make it hard to prevent this market from operating in the absence of a national agreement to prohibit online sales. Additional incentives for online sales may be created through the proposed licensing scheme. Given the nature of online sales, this makes the Commonwealth's role in addressing the supply chain and supply channel more critical. BRV recommends that government raise this issue as an urgent matter.

Lauren KATHAGE: Thank you. And are there lessons we have learned then with liquor licensing that can be applied in respect to tobacco? We have alcohol being delivered by different delivery services and ordered online et cetera, so with the online component and more broadly, can we learn from liquor licensing?

Cressida WALL: I think that there are undoubtedly lessons to be learned across the licensing system of other products, and liquor licensing would be one of them.

Lauren KATHAGE: Thank you. Thank you, Chair.

The CHAIR: Thank you, Ms Kathage. Ms Wall, our session this morning has come to an end. Thank you very much for taking the time to appear before the committee this morning. The committee is going to follow up any additional questions or any questions taken on notice in writing. Responses are required within five working days of the committee's request.

The committee is now going to take a very short 5-minute break before recommencing the hearing. I declare this hearing adjourned.

Witness withdrew.