

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

Martin O'Brien, Assistant Commissioner, Crime Command, Victoria Police.

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 owners of the land on which we are meeting, and we pay our respects to them, 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. Verified transcripts, presentations and handouts will be placed on the committee's website.

I welcome Assistant Commissioner Martin O'Brien APM from the Crime Command squad of Victoria Police. Assistant Commissioner, I am going to invite you to make an opening statement or presentation of no more than 5 minutes, and this will be followed by questions from the committee.

Martin O'BRIEN: Thank you very much. On behalf of Victoria Police, thank you for the opportunity to appear before this inquiry today. Over the past 12 months Victoria Police has seen a significant increase in serious criminal offending linked to the illicit tobacco trade, and for this reason we welcome the opportunity to share our insights and perspective with this inquiry.

Illicit tobacco has been a growing problem in Victoria for the past 10 years, but it was not until March 2023 that this issue came into the spotlight due to a series of arsons connected to conflict between two organised crime syndicates regarding market share of the very profitable illicit tobacco and vape trades. Since March 2023 the infiltration of local and transnational serious organised crime into the Victorian and Australian illicit tobacco and vape market has resulted in a number of known extortions, firearm-related violence incidents and 71 arson attacks on tobacco premises and other business premises linked to the illicit tobacco and vape market. Middle Eastern organised crime entities, outlaw motorcycle gangs and networked youth offenders have all been linked to this offending.

Police intelligence suggests that organised crime entities are committing extortions, arsons and firearm-related offending as a means to threaten, intimidate, control or eliminate competition in this industry. In some instances competing organised crime gangs have burned down tobacco stores or other businesses owned by rivals in tit-for-tat attacks. In other instances established tobacconists have been threatened and/or extorted into stocking illicit tobacco supplied by organised crime entities, and in instances where they have not complied some of these stores have been burned down too.

While arsons of tobacco stores have occurred throughout Australia, Victoria has become the epicentre for organised crime linked to the illicit tobacco trade, with 57 of the state's 71 arsons related to the illicit tobacco trade occurring in metropolitan Melbourne. The majority of Melbourne-based arson attacks have occurred in the city's northern and western suburbs, with 47 of the 71 arson attacks occurring in the north-west metro area. Eight of the arson attacks have occurred in the inner south-eastern suburbs, and 14 were in regional Victoria. As stated by my colleague Detective Superintendent Kelly in his evidence to this inquiry at the Shepparton hearing, Victoria Police have established a dedicated taskforce, known as the Lunar Taskforce, to tackle this serious organised criminal offending. The VIPER Taskforce, an already established Victoria Police taskforce, has also been instrumental in disrupting organised crime linked to the illicit tobacco trade. In just six months the VIPER and Lunar taskforces have executed 84 search warrants linked to retail stores and associated premises, resulting in the combined seizures of nearly 600,000 vapes, 3.25 million cigarettes and over a tonne of loose tobacco. This includes the largest ever seizure of illegal vapes in Australian history just two weeks ago, where police found nearly half a million illegal vapes in a factory in West Melbourne. In the past six months our dedicated taskforces have arrested 52 individuals for arsons, extortions and associated criminal offending linked to organised crime connected to the illicit tobacco trade and 71 people with unlawful possession offences relating to the illicit tobacco and vape trades. This includes a number of youth offenders, the youngest of which

was only 14 years old. The youth offending is particularly alarming to Victoria Police as it appears that serious organised crime syndicates are recruiting already vulnerable children to commit serious crimes.

Victoria Police welcomes the Premier's recent announcement that the state government will introduce a tobacco retailer and wholesale licensing scheme in Victoria. We note the Premier's comments that smoking is the most significant contributor in our community to poor health outcomes. We also believe that it is no coincidence that the proliferation of illicit tobacco and vapes and the serious criminal offending linked to these trades have thrived in Victoria, noting that Victoria is currently the only state in Australia that does not have a legislated tobacco licensing scheme. The lack of a licensing scheme, the profitability of the illicit tobacco and vape trade, the current cost-of-living crisis and the relatively small penalties for related offending have created a perfect storm here in Victoria, which has seen the illicit tobacco and vape trade move from a minor underground issue to one of considerable heft, wealth and criminal offending causing significant harm to the community.

Victoria Police remains committed to disrupting organised crime across the state and will always act and take responsibility for community safety in relation to serious criminal offending, including when this relates to the illicit tobacco and vape trade. We believe that a tobacco retailer and wholesale licensing scheme, coupled with an enforcement regime similar to those operating in other states, is a crucial step in the effort to disrupt the serious criminal offending connected to this industry. Thank you again for inviting me to appear before this inquiry today to provide a law enforcement perspective on this important issue. I look forward to providing further information in response to your questions. Thank you.

The CHAIR: Thank you, Assistant Commissioner. Mr O'Brien.

Danny O'BRIEN: Thank you, Chair. I should state for the record we are not related, Assistant Commissioner, at least as far as I know. That is a fairly blunt assessment, that Victoria is the epicentre of the illicit tobacco trade and the crime associated with it. Is that, in police's view, almost entirely because of the lack of a licensing scheme, or is it more complicated than that?

Martin O'BRIEN: It is far more complicated than that. It certainly provides an environment where it can thrive, where there is a lack of regulation or licensing or enforcement around that particular product. I want to be clear from the outset with this: the organised crime space is commodity-driven. Whether that be tobacco today or something else in five years time, it is a commodity. We continue to tackle the organised crime entities regardless of commodity, so we see anything that assists in regard to regulation and licensing in being able to tackle those as a benefit to overall organised crime defeat.

Danny O'BRIEN: If we introduce a government licensing scheme, by definition there are going to be criminals who do not want to be involved in that and they just will not get licensed. So how does the licensing scheme actually help tackle the crime element?

Martin O'BRIEN: The licensing and regulation scheme also needs to be accompanied with appropriate offences and penalties for conducting business unlicensed and without regulation over it. It will become far more obvious to us and far more obvious to local police in regions and centres where they are dealing, because these shops and outlets in illicit tobacco are commonly known in townships and suburbs – they are feeding to general citizens that want to buy a cheaper product.

Danny O'BRIEN: Which goes to my next question: it astounds me sometimes that, as you say, you can just about go into any shop in a regional town, for sure, that says it is a tobacconist and sells gifts and there are three plastic toys on the shelf, and they are clearly selling a lot of other stuff – why is that not enforced, not just by Victoria Police but by the ATO, for example?

Martin O'BRIEN: There is limited ability, to my understanding, to be able to enforce some of those regulations, particularly under the state regimes. It is the proliferation of it as well, the volume to deal with, rather than the ATO, for example, or ABF or any of the federal authorities dealing with the more wholesale end of the business – imports and growth et cetera. But it really comes down to a limit on the regulation and enforcement actions that can be taken.

Danny O'BRIEN: So probably a question first: do you envisage that Victoria Police will be involved in enforcing the licensing scheme?

Martin O'BRIEN: The view of Victoria Police is that we will always maintain in the organised crime space but that we would not see our position in the regulation and licensing scheme system.

Danny O'BRIEN: Right. The question I am going to, though, is: if you go to Leongatha and there is a tobacco shop in town, surely that is a case of someone being able to go in, 'someone' either being – well, at the moment it is council I think – someone from a regulation agency or from Victoria Police, and say, 'Where's your licensing?' And if you have not got it, you are basically shut down. Is that how you would see it happening in future?

Martin O'BRIEN: Absolutely. I would see that there is definitely room for an enforcement scheme by an authority that is ultimately decided by government.

Danny O'BRIEN: Yes, and that gives you then the opportunity, if they are not licensed, to make further inquiries and presumably chase up any links to other crime.

Martin O'BRIEN: And certainly, again, if there are any links in that particular circumstance to any organised crime entity, Victoria Police would absolutely have an interest in that and would be engaged with whatever authority is undertaking the licensing scheme.

Danny O'BRIEN: But Victoria Police would not like to be the enforcer of the regulations in the first instance?

Martin O'BRIEN: No, I would not like to see Victoria Police engaged at that level.

Danny O'BRIEN: Are you aware if government has made any decisions or had discussions as to who will be?

Martin O'BRIEN: I am not aware. I am aware that a draft document has been done, but I have not sighted that as yet.

Danny O'BRIEN: You mentioned that this has become an issue in the last 10 years in particular. What has caused that, and perhaps could you comment on whether chop-chop is still an issue or whether it is more the imported illegal cigarettes?

Martin O'BRIEN: Perhaps I will answer the last past first. What we have seen over this period where we have been tackling this head-on is probably more of the packaged product, the easily saleable item – cheap, high profit, less issues to deal with in transport, logistics et cetera and an ability to provide more product more readily. Certainly we are seeing more of the packaged product, not to say that chop-chop and the like are not still there, as you see from some of the seizures. Sorry, the second part of that was –

Danny O'BRIEN: It was: why has it just become an issue in the last 10 years? Cigarettes have been around forever.

Martin O'BRIEN: It is more that as the commodity has lifted with excise, as it has lifted in the cost overall to the general public being able to purchase the product –

Danny O'BRIEN: Legally.

Martin O'BRIEN: legally – the cost associated with that and the cost of living, organised crime have seen that as a very easy opening to make high profit with low risk. It has not got the penalties associated with bringing in a containerload of cocaine or heroin. It is low risk, high reward for them, so that is what has grown over the 10 years.

Danny O'BRIEN: To that extent, how much of the shopfront arrangements are actually also dealing in illicit drugs, whether it is marijuana or other drugs as well?

Martin O'BRIEN: I think we have seen little bits of it but not really much of it.

I just want to clarify something. I read through the transcript of my superintendent's evidence to this inquiry. Just to be clear, while there are innocent retailers out there, absolutely, and mixed businesses – and there are a

whole combined lot of them – there are a number, whilst not being in the criminal world themselves, who see it as an opportunity also to profit from those big gaps in wholesale price to retail price on illicit tobacco. Some go in there knowing that they are in a market of illicit product and it runs the risk that it runs, albeit they are not organised criminals themselves.

Danny O'BRIEN: They are not organised crime, but they ultimately end up being criminals.

Martin O'BRIEN: Yes.

Danny O'BRIEN: Yes, at least in the tax avoidance sense.

Martin O'BRIEN: Yes.

Danny O'BRIEN: I could go on all day, but I will –

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

Mathew HILAKARI: Thank you. Thank you so much for joining us and for your colleague joining us the other day in Shepparton. Within the licensing regime that has been called for by both Better Regulation Victoria and you, does that make the whole illicit tobacco scheme less profitable? Why does that make it less profitable? Is it less profitable in other states as a result of a licensing regime?

Martin O'BRIEN: 'Less profitable' may not be the correct term. It will still have those profit margins, because you have still got that difference in price between the wholesale cost of bringing it in and the ultimate retail end price. I want to be clear about this. We have organised crime in many commodities, as you would understand, right here and now today. I do not for one minute suggest that there is a silver bullet for this and that we are going to cure organised crime in tobacco by bringing in regulation and licensing. However, I do say that having more barriers in it provides us an opportunity to disrupt organised crime and to limit their ability to be able to get into these markets, and the more that regulation and licensing provide that power and enforcement there, the less comfortable it is for them to operate in that environment.

Mathew HILAKARI: So it takes it off the high street and pushes it elsewhere?

Martin O'BRIEN: Well, it makes it costly for them – not with the end product; it makes it costly when we come in and are constantly either doing search warrants, seizing product or taking them before the courts – the organised crime groups. That is a cost in itself to them of doing business.

Mathew HILAKARI: Great. Thank you. Is there any illicit tobacco which is not related to organised crime? I wonder if there is a distinction you are making between that and the regulation of checking that people are not selling to minors and that there is appropriate signage and all that, and I expect that is a place you do not want Victoria Police involved in. But for the actual sale of illicit tobacco, is there any that is not related to organised crime?

Martin O'BRIEN: Absolutely there is. At the wholesale end, I would say no, because it is organised crime that ultimately bring it in at the wholesale end. However, they are providing widely. I think you have had quoted previously that there are some 1100 outlets, which do not include your major retailers like Woolworths, Coles or your service stations et cetera. I am talking about just your little tobacconists. There are about 1100 of those that we are aware of – there may be more. In those markets the illicit tobacco is playing out regardless of organised crime's involvement. It goes back to what I was explaining before. It may be people that see the opportunity to run a business. Yes, they will sell legal tobacco, but they see the higher profits being gained out of the illicit market and take the opportunity and the risks associated with going into that market.

Mathew HILAKARI: So the distinction is really that they are buying from organised crime but are not associated with organised crime, except for that buyer–seller relationship.

Martin O'BRIEN: Correct.

Mathew HILAKARI: Okay. Thank you.

Martin O'BRIEN: It is a bit like the tail end of it. You have got the honest citizen walking into one of these stores and purchasing it, knowing from reading in the press that very day that it is illicit product but seeing that they are paying whatever difference in the price.

Mathew HILAKARI: Thank you. What penalties do you recommend, or what penalties have been effective, for curtailing organised crime's association within the industry?

Martin O'BRIEN: There really would not be time to cover off on the number of different offences in the organised crime space in regard to penalties. The first thing I would highlight, though, and they are matters for government ultimately, is that no matter what the scheme looks like, at the end of the day there need to be sufficient powers to be able to enforce, so sufficient powers in regard to searches with and without a warrant, the ability to seize product and the ability to shut down premises and stop them operating. In some ways, similar to the *Liquor Control Reform Act*, we could make the person that holds the licence responsible for being on the premises – or an approved delegate or similar to that – and ultimately have appropriate penalties. I will not suggest here today what they might look like, but we need appropriate penalties that provide a deterrence factor to operating those businesses.

Mathew HILAKARI: There have been a number of raids that you have undertaken. How do you see the information from those raids making it into a new licensing regime, particularly around a fit and proper person test?

Martin O'BRIEN: Certainly I think there is, again, a part to play for Victoria Police in regard to the organised crime entities. Certainly insofar as the fit and proper person test, I think it would only be right – and I am not talking about your service stations or your Woolworths and Coles; I am talking about the one-off tobacconist store that is sitting in Ballarat or Bendigo or wherever it might be sitting – to check whether that person is a fit and proper person to be holding a licence.

Mathew HILAKARI: Just a final one – a bit of a different area. Chemical contaminants have been found in either tobacco or vapes. What are some of the substances – and are they themselves illegal substances – that have been found in them?

Martin O'BRIEN: I would have to take that on notice. I cannot tell you the breakdown of the chemical compounds that have gone through, because we do not actually analyse those. Our forensic sciences department do not do the analysis of that; that goes back to the TGA. I can say – and it lends probably into another topic, which is the storage, handling and disposal – what is involved in actually disposing of a vape product is incredibly difficult and complex and very costly.

Mathew HILAKARI: Thank you.

The CHAIR: Thank you, Mr Hilakari. Mrs McArthur.

Bev McARTHUR: Thank you very much for appearing before us today. Tell me: if the skill set of the police force locally and nationally cannot control this illicit industry, how is local government going to be able to assist?

Martin O'BRIEN: I am certainly not going to suggest to you that this all falls with local government. They are matters for state government to decide on, where this appropriately sits. All I do proffer is that a licensing and regulation scheme in and of itself does not sit with Victoria Police.

Bev McARTHUR: What main countries do the illicit tobacco and vaping products come from?

Martin O'BRIEN: Largely China and Arab nations – coming in from there as well, so it is broad.

Bev McARTHUR: So they are all imported, all the illicit products?

Martin O'BRIEN: Yes, correct.

Bev McARTHUR: What incentives could you provide that would take away the illicit aspect of the operation?

Martin O'BRIEN: It needs to be such an uncomfortable state of play for them to be able to engage in selling the product in the first place. It comes back to the licensing and regulation scheme. There need to be appropriate penalties for those to deter others from engaging in the business. I think ultimately – how I explained first up – opportunistic businesspeople see it as an opportunity to increase their profit margins with the illicit product knowing, in the current status, they run minimal risk of enforcement. They probably run a greater risk of organised crime approaches, but I think that needs to be deterred at that level.

Bev McARTHUR: But it seems that all the deterrents in the world are not stopping organised crime being involved in the drug industry. Why would we think any regulations in this area would stop them?

Martin O'BRIEN: I would absolutely agree with you. My first statement was: there is no silver bullet for this. Organised crime are in a multitude of commodities, not just tobacco. Tobacco has come to a head, as I referred to in my opening, because there were warring factions in this state, and a number of other complexities went in and fed it at the same time. What we do, both in the drug trade and in liquor and tobacco, is try and make it as uncomfortable as possible and to disrupt them wherever we possibly can to limit the exposure to the community and ultimately what will impact community safety, so we are not having extortions and robberies et cetera going on as a result of it.

Bev McARTHUR: What extra resources do you need to be able to carry out your job better? Give us a wish list.

Martin O'BRIEN: A list.

Bev McARTHUR: A wish list. Have a go.

Danny O'BRIEN: We do not have enough time.

Bev McARTHUR: We are just coming up to the budget. Just go to town on this.

Martin O'BRIEN: We always seek ultimately better powers to be able to undertake the roles that we undertake. We operate in an environment obviously where we operate to the letter of the law, and they do not, so it can be quite limiting at times and can be quite frustrating at times to be able to deal with some of these organised crime groups that are very sophisticated.

Bev McARTHUR: Tobacco is a legal product. We have now turned it into an illegal product effectively. Why don't we take away the illegal aspect of it?

Martin O'BRIEN: That is not really a question for me. I think ultimately what it goes back to, as I said in my opening, is that tobacco in and of itself is a huge issue healthwise to the community, which is why ultimately there is policy at state and federal level to try and discourage it.

Bev McARTHUR: Yes. No government has been prepared to ban it, though.

Martin O'BRIEN: No.

Bev McARTHUR: And it seems that if we do ban these sorts of products, prohibition does not really work. Would you agree?

Martin O'BRIEN: It is starting to get into personal opinion. I would think we have seen evidence of how things get driven underground.

Bev McARTHUR: So would the vaping industry be better if it was legalised and regulated?

Martin O'BRIEN: I would not like to comment on that. That is ultimately a matter for government.

Bev McARTHUR: Is Victoria particularly affected by the illicit tobacco trade compared to other jurisdictions?

Martin O'BRIEN: In regard to whether there are the number of outlets in other states, I cannot comment; I do not have that knowledge. However, what we have seen is the huge impact of significant crimes due to a

combination of factors, not the least of which is a lack of regulation and licensing but also the warring factions of relevant crime syndicates down here are pushing to take control of a larger piece of the market.

Bev McARTHUR: What extra resources do you need to curtail these warring factions?

Martin O'BRIEN: We are well resourced, and I think you would have seen that from those statistics that I gave you. I note there has not been an arson for about one month now in regard to tobacco. But we have made significant numbers of arrests, we have put a significant number before the courts and we still have got a significant number to go before the courts.

Bev McARTHUR: Are the courts a problem? Are they going to let them off?

Martin O'BRIEN: That is a matter for the courts.

Bev McARTHUR: We seem to let them off in lots of areas. Maybe it is the justice department we need to be speaking to. What is the impact on young people of this illicit trade?

Martin O'BRIEN: As I have outlined, we have seen evidence certainly of some of these organised crime groups employing youth to undertake some of their more serious crimes with the arsons, with standover extortions. We have seen the outcomes of some of those. You have no doubt seen some of the footage that has played out over the last 12 months of thankfully not too clever arsonists that tend to burn themselves and that. They are using young kids. They are using kids to go in and do the jobs, for as little as \$500 on one occasion, to commit an arson. And there is significant risk that brings to not only the children they are engaging but those that are in adjoining premises, those that are in their shops, firefighters that attend. It provides significant risk.

Bev McARTHUR: So if we increase the age of criminality, aren't we encouraging organised crime to use children more?

Martin O'BRIEN: That is a whole other question. I am quite sure Victoria Police have made their position clear on the minimum age of criminal possibility – that we are comfortable with it going to 12 but not so comfortable with it going higher than that.

Bev McARTHUR: That is enough. Thank you.

The CHAIR: Thank you. Ms Kathage.

Lauren KATHAGE: Thank you, Chair. Thank you so much for joining us. We have been speaking about the profitability of this illegal trade. I wondered: do you have any reflections on what organised crime are using the proceeds of this crime for in relation to further crimes around human trafficking and the like and therefore whether introducing the licensing scheme will have an impact on broader criminal activities?

Martin O'BRIEN: Certainly. Our intelligence provides us a relatively good picture of some of the movements of funds that come from this illicit tobacco trade into properties, into legitimate businesses, into drug trade, into weapons trade – it is a variety. As I say, these groups do not stop at one commodity. They are a mixed business, if you like, and they go across a number of commodities. They do not stop just with the illicit tobacco. If we were to shut illicit tobacco tomorrow, if some silver bullet did come through, they would then be engaged in other commodities still. Business would go on.

Lauren KATHAGE: Thank you. In Shepparton we spoke a little bit about locally produced tobacco. I got the sense from you today that it has not been – I think that that is more a matter for the ATO, is that right?

Martin O'BRIEN: Yes. We certainly provide assistance to the ATO with those, but we are seeing more in the packaged tobacco space – in the illicit trade that is.

Lauren KATHAGE: Okay. Thank you. We have just been speaking with Better Regulation Victoria about the online trade. Do you see a role for Victoria Police there?

Martin O'BRIEN: Again, in the organised crime space – and we have our cybercrime area within my command – we certainly are engaged in all facets of organised crime in the online space as well. So yes, we certainly do have a role across a number of spheres with organised crime.

Lauren KATHAGE: Thank you. You spoke about the northern and western suburbs. Were you speaking about the presence of shops or –

Martin O'BRIEN: Arsons.

Lauren KATHAGE: The arsons, yes.

Martin O'BRIEN: Arsons, yes. Arsons, extortions and, yes, ultimately, those crimes.

Lauren KATHAGE: Right. The 1100 stores then, are they fairly evenly spread?

Martin O'BRIEN: Evenly – I could not tell you off the top of my head. They are spread right across the state certainly, yes.

Lauren KATHAGE: And their locations – do you see that more as a push or pull factor or supply or demand factor?

Martin O'BRIEN: It is a bit of supply and demand – local markets, local provide, certainly supply and demand.

Lauren KATHAGE: Okay. Sure. Thank you. Thank you, Chair.

The CHAIR: Thank you, Ms Kathage. Assistant Commissioner, thank you very much for your time today. It is much appreciated.

Martin O'BRIEN: Thank you for having me.

The CHAIR: I just wanted to check with you one question from myself. You briefly touched on the complications around disposal.

Martin O'BRIEN: Around what, sorry?

The CHAIR: Containment and disposal.

Martin O'BRIEN: Yes.

The CHAIR: Is that an opportunity for committee members who are interested to go on a site visit that VicPol may be able to facilitate?

Martin O'BRIEN: I would have to have a look. A site visit being how we store them – yes, that is possible.

The CHAIR: Yes. Okay. We might write to you and come back to you on that.

Martin O'BRIEN: No problems at all.

The CHAIR: Okay. The committee is going to follow up on any additional questions today or questions taken on notice in writing, and responses are required within five working days of the committee's request. The committee is going to take a very short 4-minute break before recommencing the hearing. I declare this hearing adjourned.

Witness withdrew.