

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Vaping and Tobacco Controls

Melbourne – Monday 15 July 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

Dr James Martin, Senior Lecturer, Criminology, School of Humanities and Social Sciences, Deakin University.

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

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 you, Dr James Martin, Senior Lecturer in Criminology from Deakin University. 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. I am going to hand over to you, Dr Martin.

James MARTIN: Good afternoon, and my thanks to the committee for the opportunity to speak with you today. Australia's tobacco control policies are in disarray. For over a decade we have seen the introduction of increasingly restrictive and coercive measures, and they have escalated to such a degree that for many they now constitute prohibition in all but name. For cigarettes this has predominantly been through the imposition of an endless series of extraordinary tax hikes in an attempt to force smokers to quit. As a result Australian cigarette prices are now the highest in the world, meaning that for many smokers, people who are disproportionately concentrated in disadvantaged groups, legal tobacco is simply no longer affordable. For vapes we have seen a prescription scheme that has been rejected by 96 per cent of people who vape, which will be replaced in October by a pharmacy model that has been rejected by most pharmacies. We still have bans in place on the devices and flavours that the vast majority of adult consumers use – bans that, research shows, when implemented in other jurisdictions have led people back to smoking, the number one cause of preventable death.

These policies have been advocated by an unchecked echo chamber of overzealous public health organisations that are not only out of step with international research but also with realities on the ground. With the ban on consumer vapes affecting nearly 1.5 million Australians, we have created the second largest illegal drug market in the country and a massive new front in the war on drugs. Together with the steadily increasing black market for cigarettes this has been an extraordinary multibillion-dollar gift for organised crime. Battle for control of the black market has resulted in unprecedented violence on our streets – a staggering 87 firebombings, multiple homicides and the extortion and intimidation of law-abiding citizens who have been unwillingly co-opted into criminal activity.

This is a major crime problem of the government's own making – one that the police and border force have acknowledged that they do not have the power to stop. Public health experts will tell you that the solution is yet more law enforcement, more bans and the closing of regulatory loopholes. This reflects a fundamentally flawed and, frankly, utopian view of how black markets operate. It also shows that they are now dictating policy in areas in which they have no understanding or expertise.

With sufficient supply and demand, both of which are more than evident with vapes and tobacco, illicit supply chains adapt around whatever obstacles are put in their way. Stiffer sentences, tougher laws and fines are not an effective deterrents for organised crime – they are job opportunities. The bigger the ban, the tougher the border, the more they can charge for their services. We know this because we have over 50 years of research into the war on drugs. This has conclusively shown that prohibition, whether it is called that or not, does not work. Despite the ever-increasing billions we spend on tougher enforcement and the record numbers of arrests and seizures, we have lower illicit drug prices, increased availability and record consumption.

Contrast this with our approach to alcohol. To help minimise the harms associated with this addictive, cancer-causing and incredibly popular and harmful drug we have strict licensing laws, limits on hours of sale and a restriction on supply to under-18s. This harm reduction approach has seen drinking rates for adults steadily

declining and under-age drinking rates slashed by 50 per cent over the last two decades. This remarkable success has occurred without imposing unrealistic bans on adult consumers, who remain free to purchase alcohol in whatever strength or flavour they choose. The reason that our alcohol laws are succeeding while our drug and tobacco laws are failing is that people naturally resist being forced, whether by governments or by puritans in public health, into what personal health choices they should make – in the same way that the members of the committee would likely resist if similar choices were being made on their behalf as to what they should eat for breakfast or whether they are permitted a second glass of wine after dinner.

The reality is that unrealistic public health policies have transformed two legal, peaceful markets into increasingly uncontrolled and violent ones. In imposing bans and restrictions, and now issuing public fines on Australians whose only crime is using a less harmful alternative to cigarettes, they have portrayed a moralistic fixation on nicotine consumption and taken their focus off the biggest killer in the country. We need to stop criminalising these markets. We need to stop stigmatising, pathologising and punishing people who vape. Further positive change in reducing smoking-related harms is possible, but not through force and coercion. It will only be achieved through genuine and supportive engagement that respects the choices, dignity and autonomy of our fellow Victorians. Thank you.

The CHAIR: Thank you, Dr Martin. We will go straight to Mrs McArthur.

Bev McARTHUR: Thank you, Chair. Thank you, Dr Martin, for appearing today. Now, these bans that have been put in place have been justified on the basis of a so-called teen vaping epidemic. Can you tell us about this?

James MARTIN: Yes. This has been one of the most frustrating things from a criminology perspective, to see the really poor communication done in the media and by some in government and academia as well. The government's own data shows that there is no teen vaping epidemic. Over 70 per cent of teens have never tried a vape. The majority of teens who do vape do so infrequently, consistent with casual experimentation. Just 3.5 per cent of teens vape daily. Now, that is not great – we do not want any teens vaping or drinking or using illicit drugs, but we need to keep this in proportion. It is fewer than the proportion of teens who were smoking daily a decade ago. We know that vaping, by contrast, is overwhelmingly an adult phenomenon. Ninety-three per cent of people who vape in this country are over the age of 18, so we should not be using this tiny proportion of problematic teen use as a basis on which to determine our entire tobacco control policy.

Bev McARTHUR: Thanks, Dr Martin. But hang on a minute, aren't teens three times more likely to smoke because of vaping?

James MARTIN: Again this is another misleading and often misinterpreted claim. Yes, we do know that teens that try vaping are also more likely to try smoking, but this is a correlation, it is not causation as it is often falsely interpreted. When we look at the age cohorts – so teens and younger adults – amongst whom we see higher rates of vaping, we actually see the fastest declines in smoking. If there was a gateway effect into smoking from vaping, we would see the opposite. We would see increased rates of smoking. This trend is particularly evident amongst teens, amongst whom smoking has dropped to record low levels and has nearly been eliminated.

Bev McARTHUR: Okay. Our tobacco controls sector regularly describes itself as world leading. Is this the case, or are there other countries with different policies that work better?

James MARTIN: Australia's self-described 'world leading' is not the case. That is not an accurate description, and it has not been for some time. We can look at multiple jurisdictions around the world that do better in tobacco control than we do. If we go across the ditch to New Zealand, for example, they have seen a remarkable reduction in smoking rates since they legalised and regulated vapes back in 2020. Their daily smoking rate is now below ours. Probably the biggest success story here has actually been Sweden, though. They have not only legalised vaping but a range of other less harmful nicotine products. They have got a daily smoking rate of 5.6 per cent. They are likely to be the first country in the world to reach the 5 per cent threshold for what is considered smoke free. These are the other countries that are doing it better, and they are not doing it better by using these coercive measures. Cigarette prices in Sweden, for example, are about half the price of what they are here. By providing these other less harmful alternatives and diverting smokers away from tobacco, they are seeing these remarkable successes.

Bev McARTHUR: Are there any other ways that you could recommend to the committee to overcome this problem?

James MARTIN: Yes, absolutely. I think we need to embrace the principle of harm reduction. There are a range of less harmful nicotine-related products. Vaping is the most popular of these, but nicotine pouches, for example, have been shown in Sweden and elsewhere to successfully divert people away from smoking. I think we need to be mindful nicotine is not the problem. The vast majority of the negative health effects that come from smoking are from the second-hand smoke – that is, all the tar and the thousands and thousands of carcinogenic chemicals. If you can get the nicotine without that, then you can start to see really serious reductions in tobacco-related harms. We have seen this in Sweden. There has been a massive reduction in the number of cancer cases and smoking-related morbidity and mortality. So we do know what works, and it is not unfortunately what we are doing here.

Bev McARTHUR: Could you direct us to this research that you know about that has occurred in Sweden that gives us this these fine results?

James MARTIN: Yes, absolutely. There have been multiple studies, and I am happy to email them to you.

Bev McARTHUR: Great. The committee would be most grateful. Are there other countries apart from Sweden that you would like to point to that are doing this job better?

James MARTIN: Yes. I mean, I think New Zealand is. We are seeing massive smoking reduction rates in the United Kingdom. The UK National Health Service, for example, gives free vapes to smokers at taxpayer expense to get them off smoking. These are countries that have embraced rather than suppressed these less harmful alternatives, and they are the ones that are making the really successful strides in recent years.

Bev McARTHUR: Now, we understand also, Dr Martin, that there is a major environmental problem that occurs from vapes. Are you familiar with that?

James MARTIN: Yes, I am. There are environmental problems associated with vapes, particularly with disposable vapes. These are dwarfed in comparison to the environmental problems that are associated with cigarettes; we know cigarette butt litter is really serious. But again there are ways around this. In countries that have legalised vaping, you can have recycling schemes set up that collect disposable vapes or even non-disposable vapes for recycling purposes. A lot of the environmental problems that we see with vapes are associated with the fact that they are illegal and have been criminalised and because the government does not provide those kinds of recycling options for vapes.

Bev McARTHUR: There are major other products in illegal vapes that must cause massive health issues. Are you familiar with those?

James MARTIN: Yes. This is what we call the iron law of prohibition – that is, when we ban a substance, we start to see the criminal substitutes that come through having more serious health effects than the legal ones that are available. The illicit vapes that are coming through now have much higher levels of nicotine than anything that is available in a legal, regulated product. So the same sorts of things that we see with illicit drugs, we are seeing with vapes now as well.

Bev McARTHUR: Should pharmacists be tobacconists?

James MARTIN: No, I do not think they should. In fact I do not think we should be treating these products as medicinal products. These are consumer, adult products, and they should be regulated in much the same way as we regulate cigarettes and we regulate alcohol.

Bev McARTHUR: Okay. Thank you.

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

Michael GALEA: Thank you, Chair. Thank you for joining us today, Dr Martin. In your earlier remarks you said that 70 per cent of teens have never tried a vape, and I think you said just 3.5 per cent vape regularly. What is the data that shows that? Can I ask: what are the particular scientific papers? Are they Australian or foreign?

James MARTIN: Sure, yes. This is from the government's own national drug strategy household survey. This is published every three years by the Australian Institute of Health and Welfare. It is widely considered the gold standard in public health research, and it is relied on for our knowledge of illicit drugs and elsewhere. I am happy to email the relevant data to you.

Michael GALEA: Terrific. Thank you. You also mentioned vaping leading to smoking, and you said that correlation was not proven by causation. Do you contend that it has been proven that there is no causation or that there is no evidence either way?

James MARTIN: Well, there is strong evidence against it. That is not to say that some teens who vape, or some people who vape, do not go on to smoke; there would be some people who would follow that pathway. But we need to consider this not at the individual level but at the population level. As I mentioned before – and this is from the national drug strategy household survey as well – the fastest reductions that we have seen in smoking in recent years have been amongst age cohorts that have shown the highest uptake of vaping. If we were going to see a gateway effect toward smoking, we would see the opposite – we would see more people in those age groups that vape the most smoking. But in fact we see the opposite. So this suggests that vaping is not a gateway to smoking but rather is displacing smoking, which should be welcomed from a public health perspective.

Michael GALEA: Thank you. Do you have any data through that as to the amount of vapes that have nicotine in them or not?

James MARTIN: I think it is a bit of a furphy to think that there are many vapes any longer being sold in Australia that do not contain nicotine. This was certainly the case when we had a legal vaping industry. That vaping industry has been shut down now and has been replaced by a black market industry. If you go in and purchase any of those black market vapes, even if they say they do not contain nicotine, they almost inevitably will. I would be surprised if any of them did not contain nicotine.

Michael GALEA: Often at extremely high levels.

James MARTIN: Exactly, and much higher levels than would otherwise be available.

Michael GALEA: Thank you. In your submission you spoke about the announced reforms that Victoria is bringing in for tobacco retail licensing, and you have spoken in favour of that. Can I ask: from your perspective, what specific measures should this policy include to ensure it is successful?

James MARTIN: Victoria is unusual amongst Australian states in not having a licensing regime for the sale of tobacco products. In fact you do not even need to be over the age of 18 to sell tobacco products in Victoria. My argument is that we should treat both vaping and tobacco products in the same way that we should the sale of alcohol. There needs to be a strict licensing regime to make it easy for inspectors and have serious penalties associated with noncompliance such that we promote responsible behaviour amongst people who sell nicotine products in the same way as they do for alcohol products.

Michael GALEA: Thank you. And would you support it being overseen by the same authority that manages liquor control?

James MARTIN: No, I do not think you can. Certainly at the moment, while the trade is being dominated by black market actors, it is not feasible to have health inspectors and people, frankly, who are outside law enforcement policing these premises. If they are run and owned by organised crime groups, serious threats and credible threats, violence and intimidation are going to be in place, so you need to have proper backup from law enforcement agencies to regulate a black market. That being said, once you have a legal market – I mean, this policy is unsustainable, in my view. If it was to be replaced by a legal, regulated market, that is a different story. You could have health inspectors without police support going in and regulating those places in the same way that you do with alcohol.

Michael GALEA: But, if I can paraphrase, what you are saying is: given the situation that we are currently in, it would need a firmer response from the outset. Is that fair?

James MARTIN: Yes, absolutely. You would need law enforcement involvement.

Michael GALEA: Thank you. You mentioned the Swedish model there. Can you talk in a little bit more detail about what exact measures they brought in which had that impact?

James MARTIN: Yes. So Sweden has a legal regulated model for nicotine-containing products. You might have heard of snus before. That is a popular sort of mouth patch that contains tobacco as well as nicotine obviously. That has been replaced in recent years by nicotine pouches, which are synthetic and do not contain tobacco but do contain nicotine. Nicotine pouches have the same risk profile as legally available nicotine gums and sprays. They are not associated with cancer. They do not have significant health risks associated with them, and they are far less dangerous than alcohol, for example. You know, you can buy nicotine gum and sprays from your local Coles. I am not suggesting that you should be able to buy nicotine pouches there. I think any nicotine-containing product should be sold from a licensed retailer with strict age verification and so on, but they are the kind of approaches that they have in Sweden that have dramatically reduced their smoking rates to almost that smoke-free threshold.

Michael GALEA: Thank you. And in terms of smoke alternatives, so vapes and other things like the pouches which you have mentioned, do you think that the tobacco companies have a role to play in these fields or do you perhaps not trust their ulterior motives?

James MARTIN: I mean, I have no love for tobacco companies. I think it is noteworthy that the only vapes that you can access in Australia or that are widely prevalent at least through the prescription scheme are provided by big tobacco. So let us not pretend that the current regulatory model is a huge enemy to big tobacco. Vapes and nicotine pouches represent a threat to their business model, but from my perspective the focus needs to be on tobacco consumption. It needs to be on smoking because that is where the vast majority of the harms lie. If tobacco companies pivot to less harmful nicotine-containing products, whether that is pouches or whether that is vapes, I would consider that a positive outcome.

Michael GALEA: Thank you.

The CHAIR: Thank you, Mr Galea. Mr Puglielli.

Aiv PUGLIELLI: Thank you, Chair. Hi. In the legal and regulated market that you would see as a proposal for this country, do you have any particular arrangements you would like to see regulated in terms of flavouring and packaging? Like, what would be best practice for you?

James MARTIN: Again, this is a bit of a furphy we see in the media, that because vapes contain flavours that this somehow means they are marketed toward teens. We know that flavours are really important for adult vapers, and there are studies again that I can send to the committee that have shown that they are really important in incentivising adult smokers to quit. If we look at the flavours that are available through the government's prescription, now pharmacy, model, we have got mint, menthol and tobacco. These are amongst the least popular flavours amongst adult vapers, and flavours are actually more important for adult vapers than they are for teens. The government's national drug strategy household survey shows that the main reason that three-quarters of the teens who try vaping do so is because they are curious and around 15 per cent say that it is because they taste better than cigarettes. Those numbers increase if we start looking at the adult proportions. So flavours are more important for adults who vape than they are for the minority of teens who vape.

Aiv PUGLIELLI: Okay. So I suppose just from the previous sessions we have just had, which I think you said you had not managed to catch, would you disagree with the characterisation of the current flavours on offer as 'adult' flavours based on what you have just said?

James MARTIN: Yes, I would. I mean, members of the committee presumably eat fruit. I am partial to the odd tiramisu myself. Fruit flavours and dessert flavours are not limited to children. Adults enjoy these products in foods and desserts, and they are going to prefer these flavours in vapes as well, and that is what the research shows.

Aiv PUGLIELLI: Earlier in your remarks you spoke about the need to stop punishing people who vape. Could you go into a bit more detail potentially around any concerns you may have of personal prosecution for possession and things like that that you have perhaps noticed in other jurisdictions?

James MARTIN: Yes, absolutely. I think the Greens have been really important here in getting rid of the prescription model and adjusting some of the legislation around what a threshold quantity is. We know that vapers when they have been confronted with these laws have started stockpiling devices and fluids, which in many instances I think would lead people who were not involved in commercial supply to breach the kinds of thresholds that even now are still in place. So I think there is a real danger that we see with criminalisation of people who vape, people who are not necessarily involved with commercial supply.

Aiv PUGLIELLI: Okay. You have raised obviously concerns about the prescription model. My understanding of the current federal legislation that is coming forward is that for those under 18 it is still a requirement to have a prescription from a GP to access one of these products. Do you have, flowing on from that, concerns about any young people who are dependent on these products, for their welfare or what is going to happen to them in the new legislation that comes forward?

James MARTIN: Specifically around teens who vape? Yes, I guess I do. I mean, this is a level of scrutiny that we do not see with teens who smoke. I cannot remember the last time a teen who was caught smoking was subjected to any form of law enforcement activity. If they are engaging in a far less harmful alternative, and vaping is widely considered – at least by international research and by public health organisations overseas – less harmful, I do not think a criminal response or a fine would be warranted.

Aiv PUGLIELLI: Okay. To clarify your perspective on vapes as a product, you said before that you would not view it as a medicinal product. Would you say it is a diversion product or cessation product? How would you differentiate some of these terms?

James MARTIN: I think what we see in the research now, in the national drug strategy household survey, is that it is displacing smoking, so I think we can consider it a substitute for cigarettes, and I think it should be treated not as a medicinal product. I think again this is one of the problems – these policies have been made not in consultation with people who vape. This has been a top-down approach, and I think if you spoke to the average vaper they would not consider themselves a patient who is sick and is in need of medicine; I think they would consider themselves someone who is sensibly exercising a consumer choice for a less harmful nicotine-containing product. So I would advocate for a regulatory model that treats them not as medicinal products but as an adult, regulated consumer product.

Aiv PUGLIELLI: Okay. Thank you. Thank you, Chair.

The CHAIR: Thank you, Mr Puglielli. Mr Tak.

Meng Heang TAK: Thank you, Chair, Dr Martin. I want to go back to your law enforcement component. The Victorian police and others have advised that tobacco licensing alone needs strong enforcement to make it work. Can you explain why a licensing scheme in isolation would not work?

James MARTIN: Absolutely, happy to. The main problem here, and we see this with the regulation of other illicit drugs, is if we consider this from an economic perspective – this is the most important thing to argue – when there is sufficient supply and demand it does not matter essentially what the government interventions are, because criminal actors who specialise in evading government controls, whether that is at the border or whether that is on the street, will adapt. So we see this with other illicit drugs. These are not deterrents, as I said – they are job opportunities, because it is criminal organisations who specialise in evading these controls; they actually rely on these control measures to charge for their services. You could double the law enforcement budget, the drug enforcement budget, which is around \$3.5 billion spent nationally on drug law enforcement in Australia. That is triple what we spent 15 years ago, and despite that we have increasing rates of illicit drug use, we have increased availability and often lower prices for illicit drugs. So this is, I think, pretty conclusive and damning evidence, quite frankly, that relying on a law enforcement response when you have got these huge economic drivers of black markets is just simply not effective.

Meng Heang TAK: Thank you for your answer. Thank you, Chair.

The CHAIR: Mr Hilakari.

Mathew HILAKARI: Thank you. Thank you for attending today. You stated earlier there is a natural resistance in reference to markets like this – or is it really actually related to people participating in drug addiction as opposed to a natural resistance to licensing regimes or prohibition regimes?

James MARTIN: Addiction is a really slippery sort of concept, and differentiating between addiction and use that is problematic, use that people want to stop, is really difficult to do, and addiction specialists have varying definitions of what addiction actually is. It is a tricky issue to consider, but if we think about this in terms of other drugs, you will hear people who drink coffee, for example, saying, ‘I can’t function in the morning before I get my cup of coffee.’ We do not consider that addiction, but it is addiction. If people who are addicted to caffeine do not get their morning cup of coffee, they will get headaches, they will get other withdrawal –

Mathew HILAKARI: But they do not cost the health system so much, though, do they?

James MARTIN: Well, it depends. I mean, if you –

Mathew HILAKARI: I might move on. In terms of a licensing scheme, would you support that it would reduce the tobacco-related criminal elements even without a substantial enforcement process?

James MARTIN: I think it could at a lower kind of tactical or investigative level, but I would again stress that without addressing the economics, the underlying black market economics, that are promoting this – the demand and the supply – it is really just window-dressing. It is a bandaid on an otherwise serious and untreated wound.

Mathew HILAKARI: Just in your experience and understanding of looking at places like New Zealand and Sweden, you mentioned a few times displacement. To me that is a little bit of a replication of one for the other, but is that a reality, or in reality are we seeing much more increased use of nicotine products when vaping and pouches are available or are we seeing a flatlining? The evidence that I have seen from New Zealand is that there is almost four times as much usage of nicotine products by young people, so it is not a displacement; it is actually an increased usage.

James MARTIN: Yes, but again, I think we need to differentiate –

Mathew HILAKARI: And I accept the idea that you are putting forward that the harm is less per usage –

James MARTIN: Much less, yes.

Mathew HILAKARI: but there is a significantly higher level of usage. Is that what you are observing and what your knowledge is?

James MARTIN: I am not sure. I would need to check that data.

Mathew HILAKARI: Okay. Thank you.

The CHAIR: Thank you, Mr Hilakari. Dr Martin, our time together this afternoon has come to an end. Thank you very much for taking the time to appear before the committee this afternoon. The committee will follow up on any additional questions 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 break before recommencing the hearing. I declare this hearing adjourned.

Witness withdrew.